

1988 Personnel Rules

With
ADDENDUM

FOREWORD

Chapters 3 and 4 of Title 36 of the General Laws of 1956, together, are known as the State Merit System Act. Title 36-4-8 of this Act reads as follows: "(1) The Personnel Administrator shall recommend such rules as he may consider necessary, appropriate, or desirable to carry out the provisions of this Chapter and Chapters 3 of this Title, and may from time to time recommend amendments thereto. When such rules or amendments are recommended by the Personnel Administrator, the director shall hold a public hearing thereon, and shall have the power to approve or reject the recommendations of the Personnel Administrator wholly or in part or to modify them and approve them as so modified. Rules or amendments thereto which are approved by the Director, shall be submitted to the Governor, who shall have power to approve them with or without modification or to reject them. Such rules or amendments thereto shall become effective when approved by the Governor. Rules adopted under this section shall have the force and effect of law."

It is the purpose of these rules to establish procedures for handling personnel activities and transactions provided for in the "State Merit System Act" in such a manner as to insure that the controlling factor in making appointments to and discharges from the State service, in determining promotions and demotions within the State service, and in doing all other things which in any way affect an employee or prospective employee of the state service will always be based on the merit and fitness of the person concerned without regard to personal, political or other factors not relating to true merit and fitness.

The Personnel Administrator shall promulgate, rescind or amend administrative regulations deemed necessary for the interpretation or application of the Act and Rules or to establish procedures to be followed in their application. Such regulations, when approved by the Director shall be deemed to be the official policy of the State and shall be binding upon all parties concerned.

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CERTIFICATION

State of Rhode Island Department of Administration


We **Bradford E. Southworth**, Personnel Administrator of the Office of Personnel Administration and **John J. Hogan**, Chairman, of the Unclassified Pay Plan Board, certify the attached is a true and correct copy of the Classified and Unclassified Personnel Rules as amended. These rules were adopted after a public hearing held on April 25, 1988.


The purposes of these rules are to:

- 1) Promote economy and efficiency in state government through the recruitment, selection, employment, compensation, and advancement of employees, based on their relative knowledge, abilities and skills, with consideration of experience and longevity, including open consideration of qualified applicants for initial appointments.
- 2) Assure equal opportunity to applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, age, marital status, mental or physical disability, or religious creed, and with proper regard for their privacy and constitutional rights.
- 3) Retain maximum authority and responsibility at the agency level for decisions to select or to terminate employees and for other facets of personnel management as may be consistent with the rule-making authority of the Personnel Administrator and the Chairman of the Unclassified Pay Plan Board for the development of uniform personnel administrative procedures.
- 4) Establish the necessary procedures to assure reasonably uniform and consistent personnel practices and provide a reliable basis for personnel cost projections and staffing patterns.
- 5) Encourage the retention and improved performance of employees in the state's service by establishing procedures, rules regulations, or guidelines regarding training, staff development, and career advancement.
- 6) Establish uniform systematic processes for Personnel Administration.

We further certify that all previous agency rules are superseded by the contents of this filing.

Done this 25th day of April, 1988.


Bradford E. Southworth
Personnel Administrator


John J. Hogan, Chairman
Unclassified Pay Plan Board

AFFIDAVIT OF PUBLICATION

The undersigned certifies the attached printed notice was published in the Providence Sunday Journal newspaper one successive time the first insertion having been on the 3rd day of April, 1988, and that said newspaper is recognized as the State newspaper with the largest circulation.

LEGAL NOTICE LEGAL NOTICE

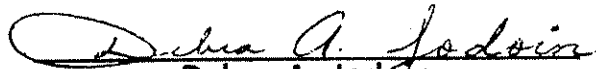
STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
DEPARTMENT OF ADMINISTRATION
Office of Personnel Administration
289 Promenade Street
Providence, Rhode Island 02908
NOTICE OF PUBLIC HEARING

In accordance with and pursuant to the provisions of the "Administrative Procedures Act", (Chapter 42-35 of the General Laws of Rhode Island and specifically, Section 42-35-3) a hearing will be held for the purpose of amending the Personnel Rules, and rules and regulations for conducting hearings by/before the Department of Administration.

A hearing will be held on April 25, 1988 at 10:00 am in Room 313 State House, Providence, Rhode Island.

Parties interested in/or concerned with the above mentioned matter, are invited to be present and may offer testimony or written statements at that time. Copies of the proposed rule changes will be available in the Office of Personnel Administration between the hours of 8:30 am and 4:00 pm.

Bradford E. Southworth
Personnel Administrator
Office of Personnel Administration



Debra A. Jodoin
Office of Personnel Administration
Department of Administration

AFFIDAVIT OF COMPLIANCE WITH ADMINISTRATIVE PROCEDURES ACT


I, Charles J. McCarthy, Administrator of Adjudication, certify that the aattached is a true and correct copy of the Classified Personnel Rules as amended at a Public Hearing conducted on April 25, 1988.

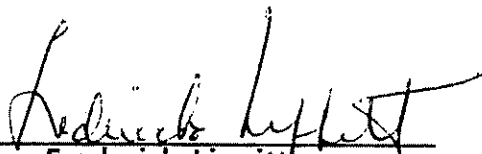


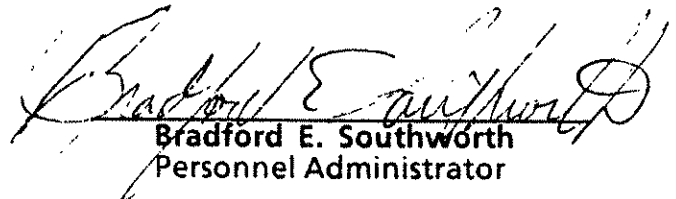
Charles J. McCarthy
Administrator of Adjudication
Department of Administration

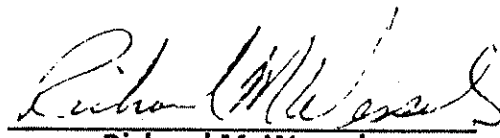
April 25, 1988

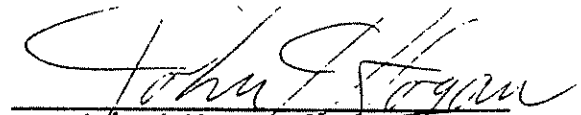
These rules were approved pursuant to R.I.G.L. 36-4-8 and the State Classified and Unclassified System Rules and Regulations dated May 16, 1988, as amended and promulgated under provisions of *Chapter 42-35 of the Rhode Island General Laws, Administrative Procedures Act.*


Edward D. DiPrete
Governor


Frederick Lippitt
Director of Administration


Bradford E. Southworth
Personnel Administrator


Richard M. Wessels
Associate Director


John J. Hogan, Chairman
Unclassified Pay Plan Board

AUTHORITY

Statutory Authority

These rules are published in accordance with the provisions of Rhode Island General Law 36-3-5, entitled "Powers and Duties of Administrator".

A. Applicability:

These rules apply to all employees in Rhode Island State Government, unless specifically exempt by statute or not authorized by a respective governing body.

Branch of Service

Governing Body

Classified

Exec. Branch: Governor and Personnel Administrator

Unclassified

Unclassified Pay Board

Nonclassified

Board of Governors

- B. Agency heads are responsible for the application of these rules within their agency, and shall ensure that all employees comply with the provisions of these rules.
- C. These rules shall not be construed as limiting in any way the power and authority of any agency head to make rules governing the conduct of departmental employees and the performance of departmental functions, provided that such departmental rules shall be consistent with and limited by the provisions of these rules. In cases of conflict between these rules and agency rules, State Personnel Rules shall prevail.
- D. Collective Bargaining Agreements - These rules will not be interpreted to conflict with the provisions of existing collective bargaining agreements.

Management Authority:

Agency heads are responsible for organizing their agency's work and have the authority to determine the need for creation of positions and in recommending to the Office of Personnel Administration appropriate job specifications. The agency is responsible for creation and maintenance of job specifications for all positions in their department to insure job relatedness. The Office of Personnel Administration will review proposed specifications and properly assign classifications. The agency head may delegate authority to designated representatives for purposes of administering any portion of these rules.

Availability:

Each employee has the right to examine these rules. A copy is available for inspection in the State Office of Personnel Administration, the Office of the Secretary of State, and every agency.

APPOINTMENT:

Various types of appointments include the following:

(a) Emergency -

An appointment made consistent with R.I.G.L. 36-4-32 for a specified time (generally 30 working days) processed via a CS-16 to OPA to cover an unforeseen emergency.

(b) Intermittent -

An appointment to recurrent employment which may be regular or irregular in structure as the needs of the service require.

(c) Non-Competitive -

An appointment to a class not subject to an exam in accordance with personnel rules. (see non-competitive appointment branch and position definitions)

(d) Original -

An appointment from an established list. (See original appointment definition)

(e) Permanent -

An appointment to a position without fiscal or personnel leave restrictions. Position may be full or part-time.

(f) Promotional-

An appointment to a position from the promotional list.

ASSEMBLED EXAMS:	Applicants are physically gathered to participate in competitive or continuous examinations which measure job knowledge, aptitude or consists of work samples.
AUTHORIZED AGENT:	an individual given the authority to act on behalf of his/her superior.
CERTIFICATION	means the act of submitting the required number of available names on an appropriate list to an Appointing Authority for the purpose of making an appointment.
CIVIL SERVICE:	Classified positions governed by civil service under the Rhode Island General Laws of Title 36 and rules and policies promulgated.
CIVIL SERVICE APPOINTMENT:	An original classified service appointment or a promotional appointment made pursuant to the provisions of the Civil Service law and rules.
CIVIL SERVICE EMPLOYEE:	A person holding a Civil Service classified appointment.
CIVIL SERVICE LAW:	Title 36 of the General Laws, primarily Chapters 3 and 4.
CIVIL SERVICE LAW AND RULES:	Title 36 of the Rhode Island General Laws (RIGL) and the rules promulgated pursuant to the Administrative Procedures Act (RIGL 42-35).

COMPETITIVE EXAMINATION:	A competitive test held (from time to time whenever the Personnel Administrator determines the public convenience so requires) for original appointment and open to all eligible persons, as provided for in Rhode Island General Laws, Title 36, Chapters 3 and 4 and the Rules.
CONTINUOUS EXAMINATION:	On-going competitive tests held (from time to time whenever the Personnel Administrator determines the public convenience so requires) for original appointment and open to all eligible persons in accordance with Rhode Island General Laws, Title 36.
DELEGATION:	The delegation of the administration of personnel functions to selected staff or agencies.
DEMOTION:	means a change of an employee from a position of one class to a position of another class for which a lower maximum rate of pay is provided.
DIRECTOR:	means the Director of the Department of Administration.
DISABLED VETERAN:	Any war veteran who is an examinee and who is certified by the veterans administration to be physically disabled, as a result of a service connected disability, with a disability rating of zero per cent (0%) or more.

ENTRANCE REQUIREMENTS:

The prerequisites, otherwise known as minimum requirements, which an applicant must satisfy to be eligible to take an examination.

**EQUAL EMPLOYMENT
OPPORTUNITY:**

The removal of all barriers to employment which unfairly discriminate against certain groups of individuals. This applies to the areas of hiring, promotion, demotion, transfer, recruitment, layoff or termination, rate of compensation, inservice or apprenticeship programs, and all other terms and conditions of employment.

EXAMINATION:

Civil service testing of employees or prospective employees for positions in the classified service. Said testing is governed by federal and state merit system principles, personnel rules and policies/procedures for examination. Types of exams include:

- ~~not~~ Assembled: *
- Competitive *
 - Continuous *

Oral *

Promotional *

~~not~~ Unassembled *

* Refer directly to specific term.

FLEXTIME:

A program that allows participating employees to schedule their work hours on a daily basis within the guidelines and bandwidth established by their department. The number of hours worked per weeks remains constant, but the daily amount of hours can vary with employee selected starting and departing times.

JOB ANALYSIS:

A systematic process for the examination and determination of:

- (1) The nature, characteristics, functions, duties, activities or responsibilities of a job;
- (2) The knowledge, skill or experience which is essential to have for its performance;
- (3) The environmental conditions, safety, equipment, tools and related factors of the job.

JOB GROUP:

A unit of the general salary schedule which includes all classes in the position classification plan which are sufficiently comparable in value as regards duties and responsibilities, irrespective of the field of work of which they form a part, so that the same salary range may be made to apply to all classes in the same unit of the general salary schedule.

LAY OFF:

means an involuntary separation of an employee from a position in the State service either by reason of reduction of force due to lack of work or lack of funds or by reason of the abolishment of the position.

LATERAL TRANSFER:

means a change of an employee from one position to another in the same class.

**LIMITED PERIOD
APPOINTMENT:**

is either a temporary, original, or promotional appointment of a person to a position for a stated limited period of time.

ORIGINAL APPOINTMENT:

means the appointment by an Appointing Authority of a person to a position in the State Service from an employment list.

PART-TIME POSITION:

means any position which is established with a work schedule having fewer hours than the official workweek to which the class is assigned.

PAY PLAN:

means a schedule of salaries established for the several classes of positions recognized in the classification plan so tht all positions of a given class will be paid the same salary rate or range established for the class.

PERFORMANCE APPRAISAL:

A report written on an employee within state service, resulting from the process of comparing an employee's performance against preestablished written performance standards in order to arrive at a performance evaluation or rating.

PERMANENT EMPLOYEE:

A person who is employed in a civil service position (1) following an original appointment, subject to serving of a probationary period as required by law, but otherwise without restriction as to the duration of his/her employment; or (2) following a promotional appointment, without restriction as to the duration of his/her employment.

**PREFERRED
REEMPLOYMENT LIST:**

Any person in the classified service who holds permanent status and is laid off as a result of reorganization or abolishment of a position(s) shall be placed on said list in the order of length of service and appointment therefrom shall be in the same order. This list supersedes all other classified lists.

PRIMARY SENIORITY:

is the length of service within a class of position.

PROBATIONARY PERIOD:

is a working test period and a part of the examination process, following an original, promotional or noncompetitive appointment, during which an employee is required to demonstrate his/her fitness for the position to which (s)he is appointed by the satisfactory performance of the duties of said position. Such probationary period shall be for one hundred and thirty (130) days worked in a normal work schedule in the classified position to which the person has been appointed.

PROBATIONARY STATUS:

is the status acquired by virtue of an original, promotional or noncompetitive appointment.

**PROMOTIONAL
APPOINTMENT:**

means the appointment by an Appointing Authority of a person to a position in the state service from a Promotional List.

**PROMOTIONAL
EXAMINATION:**

A competitive test which is open only to state employees in the classified, unclassified and nonclassified services who are employed at the time of the first phase of administration of the examination under conditions as specified in Personnel Rule 3.071, General laws, Title 36.

REALLOCATION:

means the action taken to place an existing position into an appropriate class of position because of a change in duties and/or responsibilities of said existing position, or because of amendment of the Classification Plan, and officially assigning to that position the class title for such appropriate class of position.

REEMPLOYMENT LIST:

means a list of names of classified employees arranged in the order as provided in the act and the rules who have formerly occupied positions in the classified service, who have been separated from the classified service and who are entitled to have their names certified to Appointing Authorities under the provisions of the act and these rules.

REGISTER:

A list of certified eligibles established by the Personnel Administrator, pursuant to the Civil Service law and rules, from which certifications are made to Appointing Authorities to fill Civil Service positions in the classified service.

**REGULAR PART-TIME
EMPLOYEE:**

A person who works a regularly scheduled work week of at least half the hours of a full-time employee and who receives benefits prorated on the percentage of time worked.

REINSTATEMENT:

The restoration of an employee to a position pursuant to the Civil Service law and rules.

SEASONAL POSITION:

A position requiring the services of an incumbent, on either a full-time or less than full-time basis, beginning no earlier than May first and ending no later than September thirtieth in any calendar year.

SECONDARY SENIORITY:

is the length of service in which an employee has worked in the next lower rated position in the classification hierarchy.

SENIORITY:

Ranking based on length of service.

Primary Seniority - is the length of service within a class of position.

Secondary Seniority - is the length of service in which an employee has worked in the next previous position.

State Seniority - is the length of continuous service in which an employee has worked for the State. A leave of absence or absences does not constitute a break in service.

Bargaining Unit Seniority - Length of service served in a subdivision(s) of a major union recognized by the State Labor Relations Board as a bargaining unit., categorized by EE number(s) assigned by State Labor Relations Board.

Union Seniority - Length of service served in a major union recognized by the State as a collective bargaining agent under law.

TEMPORARY STATUS:

is the status of an appointee who has not acquired probationary status or permanent status in the position held. The Personnel Administrator shall within one (1) year of the appointment of such temporary appointee establish an appropriate list. In the event the Personnel Administrator has failed or fails to establish an appropriate list within one (1) year of a temporary appointment, said temporary appointee shall become a provisional employee until a suitable list is established, at which time said provisional employee shall revert to a temporary employee. (For the purpose of these rules "Provisional Status" as defined in Chapter 197, of the Public Law of 1962 is included in the definition of "Temporary Status".)

TRANSFER:

means a change of an employee from one position to another regardless of class change.

UNASSEMBLED EXAMINATION:

An evaluation of examination application and supplemental applications which consists of grading an applicant on the basis of his/her training and experience.

UNAUTHORIZED ABSENCE:

An absence from work for a period of more than five (5) consecutive calendar days for which no proper notice has been given to the appointing authority by the employee, or person authorized to do so, and which may not be charged to vacation or sick leave allowance, or for which no approval was given as provided for in Personnel Rules, 6.04 which absence shall be deemed to be an abandonment of his/her position and to be a permanent and voluntary separation from the service.

UNCLASSIFIED SERVICE:

position within the unclassified service are those established by law, specifically GL 36-4-2 or as stated in other statutes pertinent to department organization governed by the Unclassified Pay Plan Board, and include positions of trust in state government excepting classified and nonclassified. Generally, it may include the employees of elected officials, courts, independent agencies or public authorities and various positions of a policy making character. Rules are established for the unclassified service which have the force and effect of law.

RULE II

CLASSIFICATION AND PAY PLAN

2.01 THE CLASSIFICATION PLAN

- 2.011** The Classification Plan shall consist of the approved class specifications adopted for each class of position in the state classified service. Class specifications are intended to be descriptive and explanatory and are not necessarily inclusive or exclusive.
- 2.012** In determining the class of position to which a position should be allocated, or reallocated, the specification of each class shall be read as a whole. Consideration shall be given to the general and specific duties, responsibilities, qualifications required for appointment, and relationship to other classes, as together affording a description of the kind of employment that the class is intended to embrace or include. The use of a particular expression or illustration as to the duties and/or responsibilities shall not be held to exclude others not mentioned that are substantially similar as to the kind and level of difficulty and responsibility.
- 2.013** Whenever new positions are authorized and created, whenever the duties and responsibilities of existing positions change, or whenever the Classification Plan is amended, the Personnel Administrator shall allocate or reallocate the affected positions.
- 2.014 (Relates to Unclassified Service)**
- Whenever new positions are authorized and created, whenever the duties and responsibilities of existing positions change, or whenever the Classification Plan is amended, the Personnel Administrator shall allocate or reallocate the affected positions in the unclassified service subject to the approval of the Board and the Governor in accordance with Title 36-4-16.2.

2.015 When a class specification is revised, the incumbents of positions in the class shall be employed in the revised class with the same status held prior to the revision and if the pay range is changed in a concurrent action, the appropriate rate or step in the new range shall apply.

2.016 When an employee holds permanent status or is serving a probationary period in a class of position and the position is reallocated to a different class of position, the Personnel Administrator may approve his/her employment in said different class of position with the status held in the former class if his/her name appears on a current list deemed appropriate by the Personnel Administrator, or if (s)he passes a non-competitive examination of the same degree of difficulty as an open competitive examination for said different class of position; otherwise the employee may be employed in the said different class of position only with temporary status, subject to the provisions of the Act and Rules.

2.02 THE PAY PLAN - (Relates to Classified and Unclassified)

2.021 For the convenience of all concerned, the regulations affecting the administration of the Pay Plan have been included in the appropriate sections of these rules.

2.022 The Personnel Rules for the classified and unclassified service together with the pay plan established for the classified and unclassified service with the intermediate rates established within the several salary ranges shall apply to all positions within said services with the exception of all positions the salaries for which are so irrevocably fixed by specific statute that they can only be changed by additional legislation.

RULE III EXAMINATIONS

3.01 NOTICE OF EXAMINATIONS

3.011 ANNOUNCEMENT The Personnel Administrator shall prepare official announcements for open competitive and promotional examinations which shall include the following information:

3.0111 The title, salary range, and a brief statement of the duties to be performed in the class to be examined.

3.0112 The opening and closing date of the application period and place(s) where applications may be obtained.

3.0113 The relative weights assigned to the various phases of the examination.

3.0114 The minimum required final earned rating.

3.0115 The requirements as to residence and citizenship.

3.0116 That accommodations will be made in the examination process for those individuals having handicaps which would affect their ability to participate in the examination process.

3.012 PUBLICATION The official announcement of all examinations shall be posted in the Office of Personnel Administration. Official announcements of promotional examinations shall be posted in all state agencies if the examination is statewide or in the department to which the examination is limited. Official announcements of open competitive examinations shall be published in at least one daily newspaper published in Rhode Island, and may be forwarded for publication to:

3.0121 Other daily newspapers published in Rhode Island.

3.0122 Radio and television stations.

3.0123 Members of the Rhode Island legislature.

3.0124 The Rhode Island State Employment Service.

3.0125 Any other appropriate officials or groups who have requested such notification.

3.02 APPLICATION FOR EXAMINATIONS

3.021 All applications for examinations shall be made on forms prescribed by the Personnel Administrator and shall constitute an integral part of every examination. On such forms the Personnel Administrator may require information as to the education, training and experience of the applicant and such other information as (s)he may deem pertinent. The Personnel Administrator may require any applicant, for any examination, to submit documented proof of the possession of any license, certificate, degree or other qualification claimed or required by law or these rules and may refuse credit for such claimed or required qualification in the absence of such proof.

Claims made by applicants relative to citizenship, residence, preference as a war veteran or disabled war veteran, age, education, experience, or other evidence of eligibility or qualification shall be subject to verification, by authentic proof thereof, under such regulations as the Personnel Administrator may prescribe, and credit for such claims may be denied in the absence of such proof.

No application may be accepted after the close of the announced filing period, except that the Director may order the acceptance of any application or information supplementary thereto received after the close of such period and at least seven calendar days prior to the administration of the first phase of the examination. This period shall be called the "grace period".

3.03 DISQUALIFICATION OF APPLICANTS

3.031 The Personnel Administrator may deny admission to examination to any applicant, if the information contained in said application conclusively shows that the applicant has failed to present evidence that (s)he possesses sufficient qualifications to warrant examination, as set forth in the specifications for the class of position(s).

3.032 Information as to education and experience as submitted in such application and subject to verification as provided in subsection 3.021 of this Rule shall be the major factor upon which the Personnel Administrator may reject or accept the application of any applicant for admission to examination.

- 3.033** After an application has been filed, and the grace period has ended, no supplementary statement, explanation or additional claim of qualification may be accepted or considered in any appeal from denial of admission to the examination or from any examination ratings; except that the Personnel Administrator may request from the applicant or any other source such information as (s)he deems necessary to clarify or verify statements on claims appearing in the original application and may accept all of such information or such part as (s)he deems appropriate as part of the original application. Nothing in this rule shall be interpreted, however, to require the Personnel Administrator to request such information, nor shall his/her failure to do so constitute a grievance in any instance.
- 3.034** The Personnel Administrator may reject the application of any person for admission to an examination, may refuse to examine an applicant; or after examination, may remove his/her name from the promotional and/or employment list, or may refuse to certify for appointment; or, following certification, may withdraw the certification of any eligible:
- 3.0341** Who is physically or mentally so disabled as to be incapable of proper performance of the required duties;
 - 3.0342** Who is addicted to the use of narcotics or excessive use of intoxicating liquors;
 - 3.0343** Who has been found guilty of any infamous or notoriously disgraceful conduct;
 - 3.0344** Who has been dismissed from the state service for delinquency, misconduct or other similar cause;
 - 3.0345** Who has made false statement of material fact in his/her application;
 - 3.0346** Whose conduct during an examination is deemed to be improper;
 - 3.0347** Who has otherwise violated the Act and these Rules.

3.0348 Who falsifies or deceives the Office of Personnel Administration on material fact in the examination application process or misrepresents a person in the competitive or non-competitive branch shall result in disqualification from examination and all other examinations for a period of 6 months. Subsequent offenses as outlined above shall carry further penalty barring applicants from examination for a period not to exceed one year or may include removal of employee from state service subject to hearing.

3.035 Any person who feels aggrieved by a decision of the Personnel Administrator under this section may appeal to the Administrator of Adjudication and to the Personnel Appeal Board under the procedure defined in Titles 36-4-40 and 36-4-41 of the General Laws of 1956, as amended, subject to such law and the Personnel Rules adopted thereunder.

3.04 CONDUCT OF EXAMINATIONS

Policy Statement

Appointing Authorities or their duly authorized representatives shall be granted, at their request, the privilege of reviewing proposed examination material to assure a proper relationship between the examination and the classes of position(s) to be covered by the resulting list(s).

3.041 The Personnel Administrator shall make all reasonable efforts to preserve the anonymity of candidates. The use of identification numbers instead of names on all test papers shall be required.

3.042 When an employment or promotional list is established, each candidate shall be notified by mail of his/her relative position on the employment or promotional list or his/her failure to attain a place on said list.

3.043 If the Personnel Administrator is of the opinion that the conditions under which any examination was held were not such as to be fair to the candidates, the Personnel Administrator may order that the completed examination or any part thereof be cancelled and that a new examination be held.

- 3.044** Whenever two or more competitors have equal final earned ratings, their names shall be arranged on employment or promotional lists in the order of their performances in the written tests; provided, however, that when such arrangement fails to resolve a tie, the order on the lists shall be the same as the order in which their applications were time-stamped in the Office of Personnel Administration, or by seniority within the state service. Where practical, determination by seniority shall have preference.
- 3.045** A manifest error in any examination, if called to the attention of the Personnel Administrator within ten calendar days after the establishment of a list resulting from such examination, shall be corrected by him/her. Person(s) affected by such correction shall be notified by mail.
- 3.046** Candidates are required to indicate their availability for certification on the form provided for said purpose at the time of the examination and are required to immediately inform the Office of Personnel Administration in writing of any change of availability.

3.05 REVIEW OF EXAMINATIONS

3.051 Any examinee, or his/her authorized representative, shall be permitted to review the test papers of said examinee, and the score assigned thereto, under the following conditions:

3.0511 All phases of the examination must have been completed and the list or lists established therefrom.

3.0512 Written request for such review must be made to the Personnel Administrator by the examinee or his/her authorized representative within five calendar days after the mailing of the official **NOTICE OF EXAMINATION RESULTS** of said examination to him/her by said Personnel Administrator.

3.0513 Such review shall be permitted only in the Office of Personnel Administration, during business hours, in the presence of a person designated by the Personnel Administrator to assist in the review and to safeguard official records from addition, deletion, or other alteration.

3.06 APPEAL FROM RESULTS OF EXAMINATIONS

3.061 Within five calendar days after the review of an examination, as provided for in the previous section, or within ten calendar days after the mailing of the results of an examination to said examinee by the Personnel Administrator, whichever date is later, an examinee who considers himself/herself aggrieved by such results may file with the Administrator of Adjudication an appeal from the score assigned him/her in said examination and be heard at reasonable length thereon. Such appeal shall be in writing and shall include a detailed statement of the item(s) of the examination to which exception is taken by said examinee.

3.062 Any changes in lists resulting from procedures outlined in the above or following sections shall not invalidate any certification or appointment previously made from said lists.

3.063 Any person who feels aggrieved by a decision of the Personnel Administrator as a result of such appeal may further appeal to the Administrator of Adjudication and to the Personnel Appeal Board under the procedure defined in Titles 36-4-40 and 36-4-41 of the General Laws of 1956, as amended.

3.07 PROMOTIONAL EXAMINATIONS AND ADDITIONAL POINTS

3.071 Promotional examinations shall be conducted in the same manner as open competitive examinations subject to the following conditions per 36-4-22. A person is eligible for promotional examinations provided the employee is currently employed in the classified, unclassified and nonclassified service as of the official closing date of the examination announcement or twenty-one (21) calendar days prior to the administration of the first phase of the examination, whichever is later, and meets one or more of the following requirements:

- (a) any employee who holds or within three (3) years has held permanent status in the classified service; or
- (b) any employee who is serving in a probationary period as of the official closing date of the examination announcement; or
- (c) any employee who has served twelve (12) months service in the classified, unclassified or nonclassified service. In addition, meets the minimum requirements established in the class specifications. Promotion lists shall remain in effect for a period of eight (8) years or until exhausted or until combined with or replaced by a more recently prepared list.
- (d) This section shall not apply to the Rhode Island State Police.

3.0711 An employee who is not otherwise eligible above shall be eligible to take the promotional examination for the position the employee occupies.

3.072 Whenever the Personnel Administrator shall deem the best interests of the state to be served thereby, (s)he may conduct Promotional Examinations on an agency basis, in which case admission to such examination(s) shall be restricted to candidates who meet the foregoing requirements and whose employment requirements shall be met through service in the agency(s) designated in the ANNOUNCEMENT.

3.073 A state employee who holds temporary or provisional status for at least twelve (12) consecutive months in the classification for which the examination is announced shall be eligible for additional points, provided the employee has met the twelve (12) consecutive months of service requirement prior to the administration of the first phase of the examination.

3.0731 The first phase of the examination shall be defined as follows:

In the case of any one hundred percent (100%) written examination or when a written examination component is included in combination with another examination method, the final date for qualifying for bonus points shall be considered the date of the administration of the written examination or written component; in the case of examinations consisting of one hundred percent (100%) oral ratings, the final date for qualifying for bonus points shall be considered the administration of the first oral examination by the oral panel; in the case of examinations which have one hundred percent (100%) education and experience ratings, the final date for qualifying for bonus points shall be considered to be the official closing date specified on the examination announcement.

3.0732 A state employee shall receive additional points for state service at the rate of five (5) points for each year to a maximum of twenty (20) points for four (4) years of state service. Additional points shall be added to the final earned rating for the examination for the classification in which the employee is serving provided the employee satisfies the provisions of 3.073. Points shall be prorated on a quarter year basis at the rate of 1.25 points per quarter.

3.0733 Twelve (12) consecutive months of service in the classification for which the examination is announced shall include time for all paid or unpaid leaves.

3.0734 All examinations in process that have not culminated in an official list prior to July 1, 1985 shall be construed to be affected by the passage of 36-4-31 as amended; and, therefore, all candidates who would be eligible under the law and these rules shall be awarded additional points provided that they meet the requirements outlined above in 3.073, 3.0731, 3.0732 and 3.0733 above.

3.08 HANDICAPPED PERSONS - SPECIAL LIST OF ELIGIBLES

3.081 Whenever the Personnel Administrator shall deem it in the best interest(s) of the state, (s)he may prepare a Handicapped List of eligibles for appointments to position(s) in the Classified Service. Qualifications for inclusion on "Handicapped Lists" shall be subject to the following conditions:

3.0811 Certification by the Division of Vocational Rehabilitation that said individual is a severely handicapped person unable to compete in a standard examination for a particular classification.

3.0812 Certification by the Division of Vocational Rehabilitation that said individual is physically able and adequately trained to perform the duties and responsibilities of said classification.

3.0813 Subject individual must meet minimum qualifications for the particular classification as detailed in the class specification.

3.09 COMPLIANCE WITH FEDERAL STANDARDS

3.091 The following provisions are adopted to provide for compliance with the Federal Standards for a Merit System of Personnel Administration by those agencies receiving grants-in-aid under Federal statutes which require application of personnel standards on a merit basis:

To the maximum extent possible, lists of eligibles established through open competition will be maintained for those classes where vacancies can be anticipated. Since it may not be possible to fill all vacancies from such lists. The Personnel Administrator will determine, as of June 30 and December 31 each year, the classes in which temporary employees are serving in the Federally grant-aided agencies subject to the Federal Merit System Standards. (S)he will conduct an examination during the 6-month period preceding the date the determination was made.

RULE IV CERTIFICATION AND APPOINTMENT

4.01 CERTIFICATION

4.011 The Office of Personnel Administration shall certify a list of eligibles, subject to reachability and availability criteria, for an interview by the Appointing Authority or designee for the class of position for which the list was established or deemed appropriate. The certified eligible is responsible for contacting the interviewing official as instructed in the certification notice.

4.012 A A refusal for certification shall mean the refusal of a job offer by the Appointing Authority/designee or the failure to report for duty upon acceptance of appointment.

B Non-availability shall refer to any of the following circumstances:

- Waiver of availability in writing at any time
- Failure to respond to availability survey
- Failure to respond to certification notice
- Responded to certification notice stating non-availability
- Eligible interviewed finds terms and conditions of employment, as described by interviewing official, unacceptable
- An eligible who has status in a permanent position of equal or higher pay, unless employee requests retention of name on list.

4.0121 In all instances of non-availability for or refusal of a permanent, unrestricted position as outlined in 4.012 except waiver, eligibles will be placed on an inactive list for a period of 6 months. If eligible wishes to have his/her name certified at the end of that period (s)he must notify the Office of Personnel Administration in writing. In the case of a waiver, an eligible may have his/her name returned to the active list at any time by writing to the Office of Personnel Administration.

If an eligible can show good cause why (s)he refused or was non-available as outlined in 4.012 and wishes reinstatement to the active list during the 6 month penalty period, (s)he may appeal to the Office of Personnel Administration, who may order restoration of name to original rank on list. Reinstatement to a list can only be made during the legal existence of the list.

4.013 Names shall be removed from the certification process because of:

- (a) evidence of conduct which indicates that the individual would be unsuitable as defined in G.L. 36-4-24 or in other statutes and rules.
- (b) acceptance of permanent appointment for the classifications.
- (c) falsification of records.
- (d) refusal of a job offer.
- (e) termination or retirement from state service, unless specifically requested by the employee to do otherwise.
- (f) evidence that an individual could not satisfactorily perform the duties of the job.

4.014 All available eligibles certified by the Office of Personnel Administration shall be granted an interview unless the incumbent is certifiable and satisfactory to the Appointing Authority.

4.015 (Deleted in its entirety effective November 13, 1983)

4.016 An Appointing Authority may request that certification be restricted to those who possess the ability to read, write and speak a foreign language, provided that said Appointing Authority shall certify that said position requires as an integral part of the job a specific level of fluency in a foreign language in order to achieve satisfactory performance.

If the Personnel Administrator deems the request valid, the Administrator shall order the certification of the top six candidates who shall have indicated that they have the ability to read, write and speak in the appropriate language. This Appointing Authority shall then convene a panel of three persons conversant with the job requirements and fluent in the language to screen the certified applicants. The panel shall interview all persons certified to validate the level of proficiency possessed by those persons certified by the Office of Personnel Administration.

In the event that the panel determines that person(s) do not possess an adequate level of proficiency, the Appointing Authority shall request the Personnel Administrator to decertify person(s).

4.017 When an eligible who has been certified to an Appointing Authority becomes legally ineligible for appointment, that is as specified in 4.012 and 4.013, an additional name shall be immediately certified to said Appointing Authority for an interview upon request of the agency.

4.018

The Personnel Administrator or designee shall establish list(s) for specified classifications subsequent examination in accordance with law. The date the Personnel Administrator or designee signs the list(s) is the official date of establishment of list(s). Upon list establishment, the Personnel Administrator shall replace temporary appointments, who are not reachable in accordance with G.L. 36-4-31.

4.0181 (A) Temporary appointees

- (1) who are incumbents in the class examined or for which a list has been deemed appropriate, and
- (2) who are reachable; that is, in the "top" (6) for certification from the appropriate list

shall be immediately certified by the Office of Personnel Administration from temporary to probationary status to the respective department Appointing Authority. The Appointing Authority shall authorize appointment from temporary to probationary, barring any "just cause" for dismissal, effective the date of certification. Each such temporary appointee shall be immediately notified that such certification has been made.

- (B) Where the Appointing Authority finds "just cause" for dismissal of the incumbent, then the Appointing Authority may request additional available, reachable eligibles. The Personnel Administrator shall certify in this order in accordance with G.L. 36-4-25:

- (1) Preferred Reemployment List
- (2)* Promotional, Employment or Reemployment List.

- * Selection of these lists are at the Appointing Authority's discretion. An Appointing Authority may request names from the Reemployment list, composed of former state employees with status for said classification who are eligible for reemployment 3 years from termination date.

If the reemployment list has insufficient eligibles, the Office of Personnel Administration will certify additional names from the Promotional List unless the Appointing Authority requests otherwise.

4.0182 Temporary appointees, who are not reachable for certification, shall be replaced in the following order:

- (a) Those who did not apply for the examination in the reverse order of length of service;
- (b) Those who applied for the examination but did not appear for the examination in the reverse order of length of service;
- (c) Those who did not pass the examination in order of the lowest score first;
- (d) Those who passed the examination in order of the lowest rank first.

4.0183 Upon receipt of a request for a list of eligibles (either promotional or employment) for appointment, the Personnel Administrator will certify the list requested and in addition certify all persons on the "Handicapped List."

4.01831 Eligibles appointed from the "Handicapped List" will be appointed in a temporary status for a period of five (5) months. Upon completion of the five (5) months, the Appointing Authority must signify intent to continue employment whereupon said employee will be placed in a probationary status. Upon satisfactory completion of the probationary period, said employee shall be granted permanent status.

4.02**APPOINTMENTS****4.021****Appointment at Minimum Salary**

All appointments to positions in the classified service shall be made at the minimum salary applicable to the class with the following exceptions:

- 4.0211** Upon recommendation of the Appointing Authority concerned, appointments of employees who leave one class of position to accept appointment in another may be made at the existing salary of such employees, provided, however, that no appointment shall be made at any salary higher than the maximum of the range, except that the provisions of subsection 4.0613 shall apply to longevity increases. When under the provisions of this rule an existing salary falls between two successive steps of the new salary range, the appointment shall be made at the higher step. However, upon recommendation of the Appointing Authority concerned, an employee who leaves one class of position to accept appointment in a higher class of position, may be appointed at the nearest salary step of the new range which provides minimally for a salary adjustment which is equal to or greater than the difference between the first and second steps of the new class.
- 4.0212** Upon recommendation of the Appointing Authority concerned, appointments from reemployment lists may be made at a salary which would place the employee in the same position in the pay range that (s)he held immediately prior to his/her termination from the state government; except that an employee presently in state service who is eligible for the reemployment list may return to a former class of position at his/her present salary but never higher than the maximum salary of the grade for the class to which (s)he is being appointed.
- 4.0213** Original or promotional appointments of temporary employees who have qualified for their own positions shall be made at the existing salaries of such temporary employees.

4.0214 Non-competitive appointments shall be made upon recommendation of the Appointing Authority and approval of the Personnel Administrator, subject to established requirements for character, registration, certification, and/or licensure or physical condition as set forth in Title 36-4-6 of the General Laws of 1956, as amended. Appointees must maintain current and valid licensure or certification of registration as required by class specification to be eligible for continued employment. Annually on the anniversary date of hire, employee must provide the Appointing Authority and the Personnel Administrator with documentation of compliance. Failure to do so within 10 days of said anniversary date will result in termination of service for just cause.

A false or misleading statement of material fact in the application of any person for a position in the competitive or non-competitive branch shall revoke any recommendation or approval accorded such application, and the Personnel Administrator may order the immediate dismissal of an employee upon discovery of such false or misleading statement in such application.

4.0215 Title 36-4-32 of the General Laws of 1956, as amended, defines emergency appointments as follows: In case of emergency, an Appointing Authority may request an emergency appointment of any person to any position without regard to provisions of this chapter to carry on work that must be continued in the public interest but no such emergency appointment shall continue for more than thirty (30) working days in a twelve-month period nor shall successive emergency appointments be made. Approvals for such appointments shall be requested in writing in advance to the Personnel Administrator. All such appointments must be approved by the Personnel Administrator and state Budget Officer.

4.0216 Appointments Above Minimum: Authorization

Wherever a critical shortage exists in recruiting qualified candidates for specific classifications, the Appointing Authority may request of the Personnel Administrator appointment at a salary above minimum, provided that the Appointing Authority presents sufficient proof of recruitment efforts and evidence for said shortage, Updated records of approved classes shall be maintained by the Personnel Administrator.

4.0217 When an employee is required to work in a higher class of position for a period of eleven (11) consecutive days or more, or for any number of days that may be stipulated in a particular union contract, such employee shall receive the lowest salary rate of that higher class which will provide a pay increase of at least one step over his/her present base rate retroactive to the first day of such assignment.

4.0218 Residency/Domicile

Any person who has been appointed to a position in the classified service must, within six months of said appointment, establish his/her principal residence and domicile within the State of Rhode Island and maintain said principal residence and domicile throughout the period of employment as a State employee.

Residency/Domicile for Classified Employee Purposes

- (a) A person's residence for employment purposes is his/her fixed and established domicile. The determinant of one's domicile is that person's factual physical presence in Rhode Island on a regular basis incorporating an intention to reside for an indefinite period. This domicile is the place to which, upon temporary absence, (s)he has the intention of returning. Once acquired, this domicile continues until another such domicile is established. Such domicile shall not be considered lost by reason of absence for any of the following reasons:
1. Employment or service outside of the state intimately connected with military operations or with the federal government, including the spouse and dependents of an elector so employed;
 2. Confinement in a correctional facility;
 3. Being a patient in a hospital, convalescent home, nursing home or rest home or like facility; or
 4. Attendance as a student at an academic institution, including the spouse and dependents of an employee who is such a student.

(b) The following may be considered prima facie evidence of a person's residence for employment purposes:

1. Proof of qualification to vote as Rhode Island resident as certified by municipality.
2. The address furnished to the Registry of Motor Vehicles for the employee's operator's license;
3. The address from which the employee's motor vehicle is registered;
4. The address from which the employee filed his/her last federal income tax return;
5. The address from which the employee filed his/her last state income tax return;
6. The address furnished to the companies from which the employee has obtained retail credit cards;
7. The address furnished to the financial institutions where the employee maintains accounts;
8. The address furnished to the tax collector and/or assessor in those communities where the employee owns taxable real or personal property for the purpose of notification to him/her;
9. The address furnished to the insurance companies with which the employee maintains policies;
10. The address furnished to the employee's Appointing Authority;
11. The address furnished by the employee to any business, professional, union or fraternal organizations of which (s)he is a member;
12. The address furnished to governmental agencies with which the employee has contact;
13. The address of a hospital, convalescent home, nursing home or rest home or like facility at which the employee has been a patient or resident for the preceding thirty (30) days or longer;
14. The address furnished to the United States Postal Service on a change of address form as verified by the United States Postal Service.

Evidence must satisfy Appointing Authority(s). Other forms of evidence must be approved by the Personnel Administrator.

4.0219 Appointment: Statutory Service

- (a) In accordance with 36-4-59, the employee shall have been deemed to have acquired full status in the position (s)he shall be holding at the time of obtaining such status or for any position (s)he may subsequently hold, without examination.
- (b) A person with statutory service must be reachable on an appropriate or designated list in order to be appointed to a classified position.

APPOINTMENTS (Relates to Unclassified Service)

4.0220 All appointments to positions within the Unclassified Service shall be made by Appointing Authorities or the Governor in accordance with the provisions of the laws governing such appointments and the Personnel Rules adopted for the Unclassified Service which upon approval of the Governor shall have the force and effect of law except where in those agencies of State government certain requirements and standards of the Federal Government must be adhered to for the operation of specific programs. Such agencies shall be designated by the Personnel Administrator for compliance with the following regulations:

4.0221 In such agencies, the following mode of appointments to positions in the Unclassified Service shall apply.

- (a) Notice of Vacancies The Appointing Authority, with the approval of the Personnel Administrator, shall prepare official notice of vacancies which shall include the following information:
 - (b) The title, salary range, and a brief statement of the duties to be performed by the class to which the position is assigned.
 - (c) The opening and closing date of the application period and places where applications may be obtained.
 - (d) The minimum qualifications that are required for appointment to such positions including education and experience.
 - (e) Any special requirements such as licensure in a specific profession or trade, motor vehicle operator's license, etc.

4.0222 Publication

The official announcement of all vacancies shall be posted in the Office of Personnel Administration, the office of the employing agency, and other places that shall be deemed appropriate. The Appointing Authority shall further cause such notice to be published in at least one daily newspaper published in Rhode Island, and may be forwarded for publication in other public media.

**4.0223 Applications
for Vacancies**

Applications for such vacancies as defined in this rule shall be made on forms prescribed by the Personnel Administrator and may require information as to the education, training and experience of the applicant and such other information as (s)he may deem lawful and pertinent.

**4.0224 Place of Filing
Applications**

Such applications shall be filed with the Appointing Authority of the agency wherein the vacancy exists or as outlined in notice on or before the time prescribed in the Notice of Vacancy.

**4.0225 Selection and
Appointment**

Upon the determination of need to fill a position or positions under the provisions of these rules, the Appointing Authority shall appoint a committee of two senior staff members of the agency who are knowledgeable in the area wherein the position(s) exist together with a representative designated by the Personnel Administrator. Such committee shall be charged with reviewing all applicants and preparing a list of those applicants that in their opinion are qualified for appointment to such vacancies that shall exist or hereafter exist in the class of positions in the agency for a period of one year.

This committee shall in the process of reviewing such applicants for appointment, employ such methods as they may deem necessary. The methods used may include, but are not limited to, review of applicants' education and experience, conduct of oral interviews, and the use of subject matter experts for consultation.

4.0226 Upon the completion of the selection process and the certification of the committee of a list of qualified applicants to the Appointing Authority, such Appointing Authority shall make appointments to vacancies from this list in accordance with the provisions of the Rules for the Unclassified Service of the State.

4.0227 Equal Employment Opportunity

All agencies employing persons in the Unclassified Service of the State will assure that all employees and applicants for employment are provided equal employment opportunity, without discrimination on the basis of race, color, religion, sex, national origin, or age through a continuing affirmative action program.

4.0228 Title 36-4-32 of the General Laws of 1956, as amended, limits emergency appointments to fourteen calendar days and prohibits successive emergency appointments. Therefore, persons appointed as emergency appointees may be continued in employment only in accordance with the normal procedure established by the law and the rules.

4.0229 Upon recommendation of the Appointing Authority concerned, an employee who has terminated in the Classified or Unclassified Service may be appointed to a position in his/her former service at a salary no less than the salary (s)he held prior to his/her termination, provided that the time elapsed between termination and appointment shall not exceed three years and provided that the salary at which appointment is made shall not be above the maximum of the grade in which (s)he is appointed.

4.0230 Upon written presentation of a department head that it is impossible to recruit to a vacancy at the minimum of the range, an Appointing Authority, with approval of the Personnel Administrator, may appoint at a step other than the minimum of the pay range allocated to such vacancy.

4.03 RECLASSIFICATIONS

- 4.031 Whenever a position is reallocated to a different class of position and the incumbent of the position so reallocated is to be employed in the said different class, his/her salary shall be the minimum of the class or his/her existing salary, whichever is greater, provided, however, that such salary does not exceed the maximum salary of this said different class, except in the case of employees enjoying a longevity increase in which case the provisions of subsection 4.0613 shall apply. In cases of reclassification where there is substantial evidence that the employee has been performing the duties of a new classification for a considerable period of time, the Appointing Authority may recommend, that special service credits be allowed the employee for the period of service. Provided, however, that such service credits shall be limited to a period not to exceed one year prior to the date of the receipt of the official request from the Appointing Authority for such reclassification by the Office of Personnel Administration. If this recommendation is approved by the Personnel Administrator, the employee shall be given such credit in the pay range of the new classification for performance of the duties of the new classification as shall be determined by the Personnel Administrator.

4.04 SALARY INCREASES

- 4.041 An employee appointed from an employment or promotional list shall receive a one-step increase at the satisfactory completion of the probationary period and shall receive an additional one-step increase each year thereafter until (s)he has reached the maximum of his/her grade. An employee with temporary status shall receive a one-step increase after six months of service in his/her classification and shall receive an additional one-step increase each year thereafter until (s)he has reached the maximum of his/her grade. A change in status from temporary to probational during the first six months of such service shall not in any way affect the granting of said salary increase. Each increase shall require the approval of the Personnel Administrator as to the eligibility under the law and the rules. Each step in the pay grade shall constitute a salary increase, and no employee may be granted more than one salary increase in the same year of service, except those increases granted under Section 4.08. A year of service shall be deemed to be 26 bi-weekly pay periods. Any temporary employee who fails to apply for an announced examination for the class to which his/her position is allocated or who, when notified to do so, fails to appear and participate in such an examination shall not be eligible for a salary increase until (s)he has appeared for and participated in such an examination or for two years from the date of the establishment of the list resulting from such required examination, whichever date is the earlier.

4.042 Salary Increases (Relates to Unclassified Service)

This regulation contemplates the gradual advancement of an employee from the minimum to the maximum of the appropriate range established within the Unclassified Pay Plan. Salary and longevity increases shall be granted in accordance with the Law and the Rules and shall take effect on the first day of a biweekly pay period next following the anniversary date. Step increases shall be granted to new appointees after completion of six months of service, which is construed to be 13 biweekly pay periods, and each year thereafter until the maximum of the range is attained.

4.043 The effective date of salary increases shall be the start of the new pay period next following the employees's anniversary date.

4.044 Whenever a revision of the pay plan is proposed or authorized, the Personnel Administrator shall recommend to the Director of Administration appropriate regulations for the purpose of giving effect to such pay plan change.

4.045 (Relates to Unclassified Service)

Whenever a revision of the Unclassified Pay Plan is proposed or authorized, the Personnel Administrator shall recommend to the Board appropriate regulations for the purpose of giving effect to such pay plan change.

4.05 MAINTENANCE

4.051 The official Pay Plan shall be deemed to provide full compensation for services rendered.

Meals, quarters or other maintenance privileges which may be made available to employees shall be granted only after recommendation of the appropriate Appointing Authority and approval by the Budget Officer, who shall be vested with authority to conduct reviews and order such revisions or modifications as may be deemed to be in the best interests of the State and the employees. All present maintenance privileges shall remain in full force and effect until such time as a change may be made as provided above.

4.06 LONGEVITY INCREASES

4.061 Longevity is defined as total length of service with the State of Rhode Island not necessarily continuous. In computing length of service for longevity purposes all full-time and part-time employment is to be counted. Emergency appointments are to be counted and work performed by an individual under contract to the State is to be counted, State Representatives and Senators will be given two years credit for each full term served and pages, doorkeepers and clerks of legislative committees will be given 60 calendar days credit for each year served. Members of boards and commissions who are paid on a daily rate and individuals on a monthly payroll or students in assistance programs at the State Colleges receive no credit toward longevity.

4.062 Each member shall be granted longevity increases according to the following formula unless modified by a particular union contract:

<u>YEARS OF SERVICE</u>	<u>PERCENTAGE INCREASE ON GROSS RATE</u>
11	5%
15	10%
20	15%
25	17.5%
	20%

@ Completion of 7 1989
5% @ Completion of 5 years

4.0621 Gross rate is the base rate as it appears in the pay grade plus shift differential, charge duty and incentive awards.

4.0622 Longevity increases shall receive the approval of the Personnel Administrator as to eligibility under the Personnel Rules.

4.0623 Changes in Positions--Effect on Longevity Increases

Whenever an employee is receiving a longevity increase(s) and thereafter is promoted, demoted, reclassified or otherwise lawfully established in a different class of position, this change shall in no way effect the longevity increase which said employee is currently enjoying.

4.0624 Salary Range Changes

Whenever a class of positions is advanced from one range to another, the salary of each employee in the classification affected shall be advanced to the corresponding step in the new pay range. This action shall be called a pay plan adjustment. It shall not be deemed to be a salary increase.

Employees enjoying the benefits of a longevity increase or increases on the effective date of any pay plan adjustment shall continue to have the benefit of their longevity increase(s) recalculated on the new base rate for the classification. Eligibility for future longevity increase(s) shall not be impaired.

4.0625 Pay Plan Adjustments

Whenever a general revision of the Pay Plan is authorized, the necessary adjustments to implement such authorization shall be made in accordance with procedures recommended by the Personnel Administrator and approved by the Director of Administration.

4.0626 Pay Plan Adjustment (Relates to Unclassified Service)

Whenever a general revision of the Unclassified Pay Plan is authorized, the necessary adjustments to implement such authorization shall be made on a step basis between pay ranges or as otherwise indicated in the authorization.

4.0627 (Relates to Unclassified Service)

Salaries of Directors of State Departments, Judges of all State courts including Commissioners of Workers' Compensation shall be established by the Unclassified Pay Board as provided in Title 36-4-16.4 of the General Laws, 1956, as amended.

4.063 Charge Duty Assignment

It is hereby provided that Appointing Authorities may designate the duties of certain nurses' positions to be in charge of other nurses and/or attendants, certain practical nurses' positions to be in charge of other practical nurses and/or attendants, and certain attendants' to be in charge of other attendants in a Ward or Unit, and certain power plant engineers' positions of other power plant engineers in a Unit, and certain cooks' positions to be in charge of other cooks in the School Lunch Program. The persons holding such positions shall be paid additional salary over and above the salary which such employee is receiving under the Pay Plan, according to the following schedule:

Cook (School Lunch Program), when so designated shall receive an additional 23¢ per hour;

Institution Attendant when so designated, shall receive an additional salary at the annual rate of \$130.00; Institution Attendant (Psychiatric) and Institution Attendant (Mental Retardation), when so designated, shall receive additional salary at the annual rate of \$195.00;

Licensed Practical Nurse and Correctional Officer-Hospital, when so designated, shall receive additional salary at the annual rate of \$195.00;

Registered Nurse, when so designated, shall receive additional salary at the annual rate of \$250.00;

Power Plant Engineer, when so designated, shall receive additional salary at the annual rate of \$260.00.

The rates specified in this rule may be modified by a particular union contract.

When such designations are made, or withdrawn, the Office of Personnel Administration shall be duly notified on prescribed forms.

4.07 SHIFT DIFFERENTIAL

- 4.071** Employees on any shift that starts on or after 3:00 pm and ends on or before 8:00 am may be entitled to a shift differential, however, employees whose scheduled hours are 7:00 am to 3:00 pm or 8:00 am to 4:00 pm shall not receive a shift differential for the 7:00 am to 8:00 am hour or the 3:00 pm to 4:30 pm hour and one-half.

- 4.072** All employees who are permanently assigned to work sixteen (16) or more hours of a forty (40) hour workweek or fourteen (14) or more hours of a thirty-five (35) hour workweek during the period defined in 4.071, shall be compensated an additional forty cents (40¢) an hour over the rate prescribed for the classification in which their work is performed for all hours of the workweek; or they may be compensated at a rate that is stipulated in a particular union contract.

4.08 INCENTIVE IN-SERVICE TRAINING PROGRAM

Purpose: To encourage the development of the individual state employee and to improve the service of the State to its citizens.

Objectives: To familiarize employees of state government in the intricate functions of all the facets of government; to make state employees more conscious of the working of state government; to insure a broader knowledge of each department; to better evaluate their own jobs by using the knowledge received in these courses in relation to their own jobs; to improve employees' performance on the job by in-service training in specialized and general basic areas of knowledges, skills and abilities required in state employment.

4.081 Curricula to be established in accordance with the following principles:

4.0811 Training courses to be in the areas of knowledges, skills, and abilities required in the performance of the duties of the classification and the legal objectives and responsibilities of the state agency to which the employee is assigned.

4.0812 All courses integral to this program must be approved in advance by the Personnel Administrator or designee.

4.082 Incentive awards to be implemented in accordance with the following regulations:

4.0821 A certificate to be awarded at the successful completion of each course.

- 4.0822** A one-step pay increment next above the current base step (or if the employee is at the maximum of the grade or has a longevity pay increase above the maximum of the grade, an increment equal in amount to the last step in the pay grade) after the successful completion of a four-course curriculum to be effective on the beginning of the pay period next after the issue date of the certificate of completion by the Training Section, Office of Personnel Administration. Said increment to be retained, separate and apart from any salary or longevity increase that the employee may at that time, or thereafter receive, restricted, however, to the limitation contained in section **4.0823**.
- 4.0823** Each employee shall be eligible for only one such increment, under the Incentive In-Service Training Program, during the course of his/her employment with the State.
- 4.0824** Employees who are paid on a flat rate schedule, upon successful completion of a four (4) course curriculum approved by the Office of Personnel Administration, in accordance with **4.0822**, shall be eligible for a pay increment increase, the Pay Plan shall be studied to determine the nearest comparable salary grade and the increment shall be equivalent to the last step in that pay grade.

RULE V WORKING CONDITIONS

5.01 HOURS OF WORK

5.011 There is hereby established three basic workweeks as follows (a, and b may be modified by an individual union contract):

- (a)** A 35 hour workweek (five 7 hour days)
- (b)** A 40 hour workweek (five 8 hour days)
- (c)** A non-standard workweek (an average of at least 35 hours per week)

5.012 It is recognized that there are now other work schedules peculiar to certain classes of positions and such exceptions shall remain in full force and effect.

5.013 Guided by the policy herein set forth, the Personnel Administrator shall make such recommendations to the Director as may be necessary to insure that each class of position(s) is assigned to a work schedule. The Director may either approve this plan as submitted or make changes therein. This plan and the established work schedule shall take effect upon order of the Director. When a new classification is approved by the Director and the Governor, the Director shall establish the work schedule for that classification. Upon recommendation of an Appointing Authority or the Personnel Administrator, the Director may transfer classes of positions or individual positions from one category to another.

5.014 (Relates to Unclassified Service)

Guided by the policy herein set forth, the Personnel Administrator shall make such recommendations to the Board as may be necessary to insure that each class of positions is assigned to a work schedule. The Board may either approve this plan as submitted or make changes therein. This plan and the established work schedule shall take effect upon order of the Board. When a new classification is approved by the Board and the Governor, the Board shall establish the work schedule for that classification. Upon recommendation of an Appointing Authority or the Personnel Administrator, the Board may transfer classes of positions or individual positions from one category to another.

5.015 Employees who work at least sixteen (16) hours a week shall be entitled to accrue sick leave and annual leave on a pro-rata basis.

5.016 All employees shall be granted a meal period of not less than one-half hour duration nor more than one hour duration during each work day to be determined by the work day schedule that applies.

5.017 Employees shall be granted a fifteen (15) minute coffee break during the first half and second half of their work day.

5.018 Employees who are called in to report for emergency work after having left their place of employment and outside their regularly scheduled work hours shall, receive not less than four (4) hours pay at their overtime rate.

5.02 ATTENDANCE

- 5.021** No employee in the classified service shall be paid unless (s)he is at work, or in accordance with the conditions outlined in the rules, is authorized to be absent therefrom. Every employee shall notify his/her Appointing Authority, whenever possible, of his/her failure to report for work and the reason for such absence. Continued failure by an employee to conform with the requirements of attendance (such as unauthorized absence or chronic tardiness) shall be reported to the Personnel Administrator and shall be made a part of the employee's service rating record and may be subject to disciplinary action by the Appointing Authority.
- 5.022** Each department or agency shall keep daily attendance records of classified employees and shall submit reports of attendance to the Personnel Administrator in the form and on the dates (s)he shall specify .
- 5.023** Such reports of attendance shall not apply to employees whose positions are in the non-standard category. However, absence due to sick leave or annual leave for such employees shall be reported in accordance with subsections 5.0619 and 5.0624.

5.03 OVERTIME

- 5.031** It is agreed that when it becomes necessary for the efficient conduct of the business of the State, an Appointing Authority may direct or authorize overtime work. Overtime work shall be defined as the required performance of work in excess of the established workweek. Compensation for overtime work shall not be paid to employees in the non-standard category.
- 5.0311** Time and one-half shall be paid in each of the following instances: All work performed in excess of forty (40) hours and, in those classes of positions in which it is applicable, all work performed in excess of thirty-five (35) hours in any week.

5.04 HOLIDAYS

- 5.041** The following shall constitute the official holidays for state employees:

*New Year's Day (1st day, January)
Dr. Martin Luther King Jr.'s Birthday (3rd Mon., January)
Memorial Day (last Monday, May)
Independence Day (July 4)
Victory Day (2nd Monday, August)
Labor Day (1st Monday, September)
Columbus Day (2nd Monday, October)
Election Day (State Offices)
Veterans Day (November 11)
Thanksgiving Day (4th Thursday, November)
Christmas Day (December 25), except when falls on
Sunday then December 26.*

Any day which the Governor shall appoint as a holiday
Any day which shall hereafter be appointed by the general
assembly to be a holiday

- 5.042** Every employee shall be entitled to time off with pay for the official holidays specified above, when such holidays fall on his/her regularly scheduled work day(s) and shall be credited with the number of hours in his/her official work schedule for that day.
- 5.043** When a holiday falls on one of an employee's regularly scheduled days off (s) he shall be credited with the number of hours for one day in his/her official work schedule. The hours so credited for this day shall not be used in the computation of overtime.
- 5.044** Whenever an employee is required to work on a holiday which falls on his/her regularly scheduled work day, (s) he shall be credited with the number of hours in his/her official work schedule for that day plus the number of hours actually worked. The hours actually worked shall be compensated at the rate of one and one-half times.

5.0441 When a non-standard employee is directed to work on a holiday (s)he shall be compensated for an additional seven (7) hours at his/her total hourly rate.

5.045 Whenever an employee is required to work on a holiday which falls on one of his/her scheduled days off (s)he shall be credited with the number of hours for one day in his/her official work schedule plus the number of hours actually worked. The hours actually worked shall be compensated at the rate of one and one-half times.

5.046 When a holiday falls on a regularly scheduled workday within in an employees' vacation period, the employee shall not be charged annual leave for his/her absence on that date.

5.05 SPECIAL TIME OFF

5.051 Whenever it appears desirable, in the best interest of the State and its employees to allow collective absence from duty, the Personnel Administrator may authorize Department Director(s) to excuse employees at a stated time, providing that enough employees remain on duty to maintain contact with the public and carry on crucial work. Employees who are required to work when other employees are so excused shall be paid their regular rate of pay and in addition shall be granted cash payment for this service at the rate of one and one half times for the time worked.

5.06 LEAVE REGULATIONS

5.061 Annual Leave

The Employer has the right to schedule vacations.

- 5.0611 (A)** Department/Agency heads shall require employees to plan their vacations ahead of time. Criteria for determining priorities in scheduling includes seniority, rank in the organization, and needs of the agency.
- (B)** Appointing Authorities shall assign vacation leave with justice and equity.
- (C)** Absences with pay for illness; vacation; administrative, military or jury duty leaves do not affect vacation accrual.
- (D)** Every employee shall be entitled to at least two successive weeks of vacation during each accrual year of service. Dependent on agency needs, the Appointing Authority may require employees to stagger vacations or split their leave periods.
- (E)** Should a question arise between employees as to when vacation will be taken, managers shall attempt to resolve between the parties.
- (1)** Absent resolution between the parties, preference will be given to authorized employee, or the party who received first approval, then to state seniority.
- (2)** For employees covered by bargaining agreements, the procedure in the contracts shall prevail.

5.0612 Unless modified by a union contract all full-time employees whether on a standard 35 or 40 hour workweek or a non-standard workweek and part-time employees who work at least 16 hours per week or whose work schedule requires the performance of service to the state for some part of each working day of the official work schedule to which the class is assigned, shall accrue as follows for each straight time hour of service:

- 5.06121 Employees hired prior to December 28, 1980 shall accrue vacation leave according to the following Schedule A:

<u>Years of Service</u>	<u>Total Days</u>	<u>% Accrual</u>
0 - 10	15	.0577
10 - 10	18	.0693
15 - 20	20	.0770
20 - 25	26	.1000
over 25	28	.1077

- 5.06122 Employees hired on or after December 28, 1980 shall accrue vacation leave according to the following Schedule B:

<u>Years of Service</u>	<u>Total Days</u>	<u>% Accrual</u>
0 - 5	10	.0385
5 - 10	15	.0577
10 - 15	18	.0693
15 - 20	20	.0770
20 - 25	26	.1000
over 25	28	.1077

5.0613 On and after the adoption of these rules, vacation credits shall be discharged during the year accrued, except that:

5.06131 All employees, who accrue annual leave, shall be allowed to carry over from one calendar year to another not more than the amount of vacation time accrued and credited in one calendar year unless otherwise modified by the Personnel Administrator or union contract.

5.06132 Any frozen balance of vacation credits accredited to an employee, other than non-standard, as of December 31, 1951 shall be automatically carried forward until exhausted.

5.06133 Accrued vacation leave officially recorded to the credit of an employee who was in the non-standard category on December 31, 1955 shall be carried forward until exhausted.

5.0614 MODIFIED ACCRUAL PLAN

(a) The end of the calendar year shall be considered the last day of the last biweekly pay period in the year.

(b) Accrual Rate Chart-

<u>Years of Service</u>	<u>Total Potential Vacation Days</u>	<u>Up Front Days</u>	<u>Days Subject to Accrual</u>	<u>Accrual Rate</u>
0 - 05*	10	2	8	.0308
5 - 10*	15	2	13	.0500
10 - 15	18	4	14	.0538
15 - 20	20	4	16	.0615
20 - 25	26	9	17	.0654
over 25	28	9	19	.0731

* These two categories of service time vacation entitlement or employees hired prior to December 28, 1980 formerly merited 15 and 18 days respectively.

- 5.0615 When the services of an employee shall be terminated by resignation, death, dismissal, or otherwise, if such employee shall not have used actual vacation time equal to the vacation credits outstanding on his account, such employee or his/her estate shall on such termination be entitled to receive full pay for each hour of vacation leave to his/her credit as of the date of termination.
- 5.0616 The Appointing Authority may in any year assign to any employee sufficient vacation time, in excess of actual accrual credits, to permit the employee to receive the maximum number of days to which (s)he is entitled in the accrual year, which excess shall be deducted from subsequent earned vacation leave.
- 5.0617 An employee, who is transferred or otherwise changes positions in the classified service, shall have his/her sick and vacation leave credits carried over from one position to the other. An employee, who moves from the classified to the unclassified service or vice versa, shall retain all sick and vacation leave balances to his/her credit at the time of removal. An employee who moves from the classified or the unclassified service to the non-classified service or vice versa shall retain all sick and vacation leave balances to his/her credit at the time of such removal.
- ✓ 5.0618 Vacation leave credits shall not accrue while an employee is on leave without pay or absent without permission. Employees, who terminate from state service in good standing, shall receive vacation leave credit through the last complete day of service.
- 5.0619 Appointing Authorities shall report to the Personnel Administrator, on forms provided for this purpose, a record of vacation leaves approved by them for employees who accrue.
- 5.06191 Reports of frozen vacation leave of non-standard category employees as of December 31, 1955, shall also be made. Records of the Office of Personnel Administration shall be the official state record of vacation leave accruals and discharges.
- 5.06192 Employees, who are entitled to discharge accrued vacation leave, may discharge in one week no more than the number of hours assigned to their class of position.

5.062 Sick Leave

- 5.0621** Sick leave with pay shall be granted to employees within the classified and unclassified services of the state who hold full-time positions or who hold part-time positions, the work schedules of which require performance of services to the state for some part of each working day in the work schedule to which the class is assigned, or who hold part-time positions the work schedules of which require performance of services to the state of at least 16 hours per week. Failure on the part of an employee to notify his/her appointing authority promptly of his/her absence due to sickness may be cause for denial of sick leave.
- 5.0622** Unless modified by a particular union contract, all full-time employees whether on standard 35 or 40 hour workweek or on a non-standard workweek, and part-time employees who work at least 16 hours per week or whose work schedule requires the performance of service to the state for some part of each working day of the official work schedule to which the class is assigned, shall accrue 0.577 hours for each hour of service during the biweekly pay period up to a maximum of the assigned hours in the workweek for the position in which the employee is working.
- 5.06221** When an employee's total accumulation of sick leave hours shall equal the equivalent of 125 days (a day meaning the number of hours in an employee's regular work day) no further credit shall accrue until the total shall have been reduced to less than this maximum.
- 5.0623** Sick leave is hereby defined to mean a necessary absence from duty due to illness, injury, or exposure to contagious disease and may include absence due to illness or death in the immediate family of the employee or necessary attendance upon a member of the immediate family who is ill. Sick leave with pay for the purpose of such attendance, however, is to be used only in emergency and is limited to 10 working days within any calendar year. Sick leave with pay may also be granted from accrued sick leave credits, when absence is necessary during normal pregnancy or the conditions of childbirth. The appointing authority may require a physician's certificate or other satisfactory evidence for each sick leave with pay covering an absence of more than three consecutive working days. The foregoing rule regarding the use of sick leave may be modified by a particular union contract.

- 5.06231 Sick leave allowable for death in the immediate family shall be restricted to the following: wife, husband, child (including foster child), mother, father, brother, sister, mother-in-law, father-in-law, grandmother, grandfather or any other family relative residing in the employee's household.
- 5.0624 Appointing Authorities shall report to the Personnel Administrator, upon forms provided for this purpose, a record of sick leaves approved by them. The records of the Office of Personnel Administration shall be the official state record of sick leave accruals and discharges. Such records shall be available to appointing authorities and may be used in reaching decisions affecting promotions, demotions, salary increases, and dismissals.
- 5.0625 Sick leave credits shall not accrue while an employee is on leave without pay or absent without permission. Employees, who are authorized to discharge accrued sick leave, may discharge such leave on any regularly assigned work day up to a maximum of the assigned hours in their workweek. Sick leave with pay may be granted in advance of accrual, but not in excess of 80 hours, when approved by the Appointing Authority. Sick leave with pay in an amount over 80 hours may be loaned to an employee in advance of accrual upon request of the Appointing Authority, approval of the Personnel Administrator and notice to the Controller, provided that all sick and annual leave credits have been exhausted and the employee agrees that future accruals of sick leave shall be applied against such advance until the loan is repaid. Upon termination of an employee's service, any such advance of sick leave not offset by subsequent accumulations of sick leave shall be deducted from any balance of vacation credits due him/her. In unusual instances, exceptions to or modification of this rule may be made upon written request by the Appointing Authority and approval of the Personnel Administrator. Such request shall include a full explanation of the circumstances upon which the request is based.
- 5.0626 When the service of an employee shall be terminated by retirement (mandatory, voluntary or involuntary), or death, such employee or his/her estate shall be entitled to receive full pay for each hour of accrued sick leave to his/her credit as of the date of termination according to the following formula:

- 0397135
- (a) A 35 hour a week employee or a non-standard employee shall be entitled to receive full pay for 50% of all accrued sick leave over 390 hours up to and including 630 hours and full pay for 75% of all accrued hours over 630 hours up to and including 875 hours. 135 - 18
= 25
 - (b) A 40 hour a week employee shall be entitled to receive full pay for 50% of all accrued sick leave over 468 hours up to and including 720 hours and full pay for 75% of all accrued hours over 720 and up to and including 1000 hours. - 18
- 35
 - (c) Eligible part-time employees shall be entitled to receive pay for accrued sick leave on a pro-rata basis depending upon the scheduled workweek within the basic workweek for the class of position.

5.0627 Special Sick Leave

5.06271 Whenever a classified or unclassified employee shall be absent from his/her duties and receiving compensation, as provided in the Workers' Compensation laws, (s)he may be granted sick leave in accordance with the rules applicable thereto, in an amount not to exceed his/her regular compensation. Deductions from accumulated credits shall be applied only to that part of his/her salary which is paid as an addition to Workers' Compensation payments, and the total of the two shall not exceed the regular salary for a given pay period. Annual leave credits may be applied in the same manner. When such absence shall not be covered by sick leave or annual leave, it shall be deemed to be leave without pay.

5.06272 Any classified employee whose employment requires exposure to X-Rays or other unusual employment hazard may be granted special sick leave credits not to exceed 120 hours in a calendar year if (s)he is a 40 hour employee or 105 hours in a calendar year if (s)he is a 35 hour or non-standard employee. Such sick leave credits shall be available and sick leave granted upon written recommendation by the appropriate Appointing Authority to the Personnel Administrator that it has been determined by blood tests or other approved method and supported by a statement from a qualified physician that the health of the employee required such sick leave to permit recuperation from exposure to such occupational hazards.

5.0628 Nonchargeable Absences

5.06281 Bereavement Leave

In the event of death in an employee's family (see Rule 5.06231) the employee shall be entitled to absence with full pay for three days. This time shall not be charged to the employee's sick leave balance.

5.06282 Personal Leave

Each employee shall be entitled to four days of leave with pay for personal business and/or religious observance in every fiscal or calendar year depending on union contract. Employees shall not be required to state the reason for personal leave but they must obtain prior approval. Approval may only be denied if it interferes with the proper conduct of agency functions. Employees who do not use their personal leave or if it is denied on Good Friday, the day before Christmas Day and/or the day before New Year's Day may use this leave at some other time during the year. Personal leave shall not be carried over from one year to the next, nor shall an employee be compensated for unexpended time upon termination. Employees who are hired during the leave year will have their personal days pro-rated on the basis of one day for each three months or part thereof of service during the year. Nonchargeable absences may be qualified by a union contract.

5.06283 Administrative Leave (Special Time Off)

Authorization:

- (a)** The Personnel Administrator may authorize an Appointing Authority to grant Administrative Leave with pay for necessary absence from duty not otherwise provided for under "Leaves" in statutes and rules.
- (b)** The Director of Administration, upon direction from the Governor or recommendations of the Personnel Administrator, may authorize Administrative Leave under extenuating circumstances.

Categories of Administrative Leave

- Conduct of employees (refer to PR 6.02)
- To take civil service examinations administered by the Office of Personnel Administration.
- To be interviewed for another position within state service.
- To attend professional conferences, training sessions, officially sanctioned outings or work related business provided that in the opinion of the Appointing Authority it promotes the career interest of the employee in relation to state business and that the staffing requirements are adequately maintained during said period. Further, the Appointing Authority should be guided by union contracts, the principles of affirmative action and employee wellness in making decisions regarding administrative leave.
- To take a physical examination required for appointment to State service, or physical exams related to work injury in State service.
- To permit time off during extreme weather conditions or state of emergency as authorized by the Director of Administration.

5.063**Military Leave (This section may be modified by Union contract)**

- 5.0631** Every employee holding a position in the classified or unclassified service, who has left or shall leave said position by reason of entering the armed forces of the United States (whether through membership in the Reserve of the United States Military or Naval Forces or in Rhode Island National Guard or Naval Reserve, when any of the foregoing units are called to active federal duty, or by reason of enlistment, induction, commission or otherwise) and who has held a position in the classified service for 180 or more calendar days within the 12 months next preceding such entrance into the armed forces, is entitled to and is hereby granted military leave of absence from the said position commencing with the time of leaving said position for said purpose and continuing throughout the duration of said absence required by the continuance of service in the armed forces. Such leave of absence shall be deemed to have expired six months after the date of discharge from or authorized separation from active duty as a member of the armed forces. Reenlistment or other continued service in the armed forces resulting from a choice by the employee shall serve to cancel such leave.
- 5.0632** For the first 60 calendar days of such absence, every such employee shall be paid by the state the same amount as (s)he would have received had (s)he not been absent from his/her position.
- 5.0633** During that part of the period of leave described above for which the employee shall receive his/her salary, (s)he shall also accrue such sick leave and annual leave credits as (s)he would have accrued while working in said position during such period of 60 days.
- 5.0634** Employees on military leave shall be granted yearly salary increases and longevity increases when due in accordance with the conditions of eligibility outlined in these regulations.
- 5.0635** At the conclusion of such military leave of absence, the employee shall be returned to his/her position subject, however, to any law or rule which may hereafter be enacted affecting such right of return or defining the conditions under which such returns may be made. At the conclusion of each calendar year during such absence, annual leave and sick leave accumulations shall be carried over to the credit of the employee.

5.064

**Military Training Leave (Relates to Classified and
Unclassified Service)**

- 5.0641**

5.065

Jury Leave

- 5.0651

5.066 Leave Without Pay

5.0661 A classified employee may be placed on leave without pay for a period not to exceed one year when: -

- (a) The employee shall sign a request for such leave; the Appointing Authority shall recommend approval in writing to the Personnel Administrator, and the Personnel Administrator shall approve; or,
- (b) The Appointing Authority shall recommend such leave, in writing to the Personnel Administrator together with reason(s) for such proposed action, and the Personnel Administrator shall approve; or,
- (c) An employee with permanent, provisional or probationary status is appointed to a higher class of position for which no valid list exists or that is categorized as non-competitive shall request a leave in order to protect his/her status in the lower class. The Appointing Authority shall recommend approval in writing to the Personnel Administrator, and the Personnel Administrator shall approve the request. Extensions of such leaves to protect status shall be granted until such time as a valid list is established for the class of position. Upon establishment of a valid list, the employee must either qualify for permanent appointment in the class or return to the position from which the leave was granted. Every employee is entitled to only one leave in each status - - permanent, provisional or probational at any given period.
- (d) The employee shall sign a request for parental leave. Said leave shall be available to all employees for the purpose of child raising upon written notice at least two (2) weeks in advance of the commencement of the leave period. Said leave shall be granted for a period of up to six (6) months and may be renewed for a period not to exceed six (6) months upon request of the employee at least (30) days prior to expiration. In no event shall parental leave exceed a period of one (1) year or be applicable to children over the age of eighteen (18) years excepting under extenuating circumstances. Provided however the Personnel Administrator shall have the discretion to grant parental leave under extenuating circumstances. The employee on parental leave shall be covered by the health benefits carried by the State of Rhode Island for a period not to exceed one (1) year.

In all cases, leave shall be available only to the parents of eligible children and in cases where both parents are state employees, only one parent may request parental leave.
- (e) State employees will not be granted a leave to accept employment outside of State Service.

- 5.0662 Upon the expiration of such leave of absence, the employee shall be returned to the position which (s)he occupied at the time the leave became effective, subject to the law and rules. Failure of an employee to report for duty promptly at the expiration of such leave shall be just cause for dismissal. The Personnel Administrator may approve extensions of leave without pay for the same individual, upon request by the Appointing Authority.
- 5.0663 When an employee serving a probationary period shall be granted leave without pay from the class to which his position is allocated, the probationary period shall be suspended until the employee is returned to the class. When the employee is returned to the class, the probationary period shall be reinstated and continue as though no interruption had occurred.
- 5.0664 After an employee returns to his/her position after having been absent from his/her position on official "leave without pay," with the exception of leave without pay to accept another position outside the state service, the Appointing Authority may recommend salary or longevity increases which would place the employee in the position in the pay plan range to which (s)he might have been entitled if (s)he had not been absent from his/her position. If such leave is for a period of more than 6 months, the reason for such a request must be explained in detail and approval of such request must be obtained from the Personnel Administrator and the Director.
- 5.0665 Whenever the presence of a classified or unclassified employee at a hearing of the Personnel Appeal Board is requested by said Board from the appropriate Appointing Authority, said employee shall be excused from regular duties for the purpose of such attendance and shall not suffer any loss of salary for such attendance.

5.07 BENEFITS

- 5.071** Health Benefits. All management and non-union people, who are involuntarily laid off will be covered by the health benefits carried by the State of Rhode Island for the period of ninety (90) days.

5.08 LAYOFFS

- 5.081** Layoffs are restricted to the department in which the position is established. An Appointing Authority may initiate layoffs in those classes of positions, regardless of the status of the class, under his/her jurisdiction, provided prior approval has been received from the Personnel Administrator.

In all cases of layoff, first consideration will be given to employee status and length of service within his/her present classification.

If an employee is unable to retain the current classification, (s)he may replace an employee in a classification in which the employee has had prior service if the employee exceeds the eligibility requirements of employee status and service of the least senior incumbent in the class.

Employees who are to be laid off shall be notified in writing prior to the termination date.

At the time of layoff, annual leave balances will be paid off. Sick Leave balances will be held until the employee is called back to work providing it is within twelve months of the layoff.

This rule applies unless modified by a particular union contract.

RULE VI GENERAL PROVISIONS

6.01 PHYSICAL EXAMINATIONS

The Personnel Administrator shall establish a physical examination program which shall require persons employed in positions in the classes (s)he shall designate to be examined by a physician and present certification that they are physically capable of performing the duties required and that their employment in such positions will not be harmful to the state, or its employees or other persons.

The Personnel Administrator may require such physical examination at the time of appointment and at such other times as may be designated in regulations promulgated for such purpose and shall refuse to approve the appointment of any person who fails to comply with this rule, or after appointment, shall refuse to certify any payroll bearing the name of any person who fails so to comply.

6.02 CONDUCT OF EMPLOYEES

In accordance with the provisions of Title 36-4-55 of the General Laws of 1956, as amended, it is the duty of every employee to so conduct himself/herself inside and outside his/her office as to be worthy of the esteem a public employee must enjoy .

Therefore, it shall be the policy of the State of Rhode Island that no state employee shall engage in any outside business activities, however remote from the function of his/her office, which would in any way interfere with the employee's performance of his/her regular duties, or embarrass or bring discredit to either the employee or the state. State employees who avoid or ignore this policy shall be subject to disciplinary action.

Furthermore, whenever a state employee shall so conduct himself/herself as to cause scandal or to lose or jeopardize such esteem, (s)he may be dismissed for the good of the service, subject to the provisions of the law and rules.

6.021 Authorization

(a) Approval 10 days

Whenever it appears to be in the best interest of the State, an Appointing Authority may, with the approval in advance by the Personnel Administrator, place an employee on paid Administrative Leave for a period of not more than one pay period (10 working days) in a calendar year.

The use of Administrative Leave so defined is not deemed to be mandatory by an Appointing Authority and does not preclude the immediate application of the provisions of Rule 5.0661 (Leave Without Pay) in such cases as it shall appear to be in the best interest of the State.

(b) Extension(s) beyond 10 days:

The Director of Administration, with the recommendation of the Personnel Administrator, may extend the period of Administrative Leave beyond any leave already granted if it is in the best interest of the State to grant such extension.

6.022 Administrative Leave With Pay

One of Administrative Leave categories, as referred to in Rule 6.02 is absence from duty with pay necessitated by internal investigations and/or hearings, as to alleged charges of malfeasance or misfeasance or dereliction of duty by a State employee; conduct of activity which would interfere with an employee's ability to perform his/her duties; conduct which would embarrass or bring discredit to either the employee or the State.

6.023 Expiration of Administrative Leave

Upon the expiration of said Administrative Leave, an employee must be returned to full-time duty without prejudice or placed on leave without pay pending a final resolution of the case in question.

6.03 DEMOTIONS

When the services of an employee, who holds permanent status are not satisfactory, the Appointing Authority may demote the employee to a position in a lower class and grade, and such employee shall be granted permanent status in the class of position to which (s)he has been demoted. The compensation in such lower class shall be determined by the provisions of Rule IV Subsection 4.0211. An employee may be granted a demotion upon request, when recommended by his/her Appointing Authority and approved by the Personnel Administrator. Such demotion shall be termed a voluntary demotion and shall not be deemed a disciplinary action.

6.04 RESIGNATIONS

An employee in the classified service desiring to resign in good standing shall give his/her Appointing Authority notice of at least 14 calendar days prior to termination of services. Such resignation shall be submitted on the appropriate forms, signed by the employee, and must be approved by the Appointing Authority and the Personnel Administrator to become effective.

Any employee, who is absent from duty without authorized leave for five consecutive working days or who fails to resume his/her duties at the expiration of a leave of absence, shall be deemed to have resigned without notice. Such resignation shall be submitted on the appropriate form, signed by the Appointing Authority, and must be approved by the Personnel Administrator to become effective. Such resignation shall be not in good standing unless otherwise requested by the Appointing Authority and approved by the Personnel Administrator. In each instance of such resignation without notice, a copy of such action shall be mailed by the Appointng Authority to the last known address of the employee within 5 days after the approval of the Personnel Administrator.

6.05 APPLICATION: (CS-14 NEW HIRES AND TRANSFERS TO OTHER POSITIONS)

(a) Request for Current Application to Maintain Updated Records

The Personnel Administrator shall promulgate an application which must be filled out according to instructions by all individuals seeking State employment or seeking transfer to another position, hereinafter referred to as transfer.

Said application shall be used in accordance with law for administrative processing related to recruitment and placement and may include such information as an individual's name, address, social security number, education and work experience, criminal record, military record and any other information deemed pertinent by the Personnel Administrator.

(b) Request for BCI Check (Bureau of Criminal Identification)

An Appointing Authority must request a criminal record check when an offer is extended for hire or transfer. Convictions listed either on the employment application or criminal record must be verified with the prospective employee by the Appointing Authority. Those convictions deemed pertinent to the position sought by the applicant may be grounds for refusal to hire or grant a change of classification. Inconsistent or falsified information supplied on an application may also be deemed sufficient reason not to hire or grant a change of classification.

6.06 SOLICITATION ON STATE PREMISES

No one shall conduct any solicitation or private business in any State building, in any State office in a private building, or on property owned or occupied by the State of Rhode Island. No person shall enter or remain on said property nor post any type of notice for any purpose excepting with permission of the Director of the Department of Administration.

RULE VII

STATE AWARDS PROGRAM

7.01 SCOPE AND PURPOSE

This rule sets forth the rules and regulations for administration of the program of state awards for employees of the state.

7.02 STATEMENTS OF POLICY

- 7.021** The purpose of pay incentives established by Title 36-4-62 of the General Laws of 1956 (as amended) shall be known as the State Awards Program.
- 7.022** The State Awards Program shall recognize those employees who:
- (a)** Propose procedures or ideas which are adopted and which will result in eliminating or reducing state expenditures or improving operations, provided such proposals are placed in effect, or
 - (b)** By their superior accomplishments, make exceptional contributions to the efficiency, economy, or other improvement in the operations of state government.
- 7.023** Each agency head shall encourage employees to participate in the State Awards Program.
- 7.024** The State Personnel Administrator shall administer and promote the State Awards Program on a statewide basis.
- 7.025** The State Personnel Administrator shall determine the eligibility of each suggestion; refer each eligible suggestion to agencies concerned for investigation and evaluation; acknowledge receipt of suggestions and keep suggesters informed as to the status of their suggestions.
- 7.026** A qualified employee may receive a total monetary award for a suggestion adopted based on tangible criteria established pursuant to the provisions of these rules and the law.
- 7.027** The acceptance of a cash award for any suggestion adopted through the State Awards Program shall constitute an agreement by the employee that all claims, immediate and future, on the State of Rhode Island, regardless of the use made of the suggestion, will be waived.

7.03 ELIGIBILITY OF EMPLOYEES

7.031 All employees of the State of Rhode Island shall be eligible to participate in the State Awards Program except:

- (a) Group I which shall consist of the General Officers of the State, members of the General Assembly, the executive staff of the Governor, Judges of the District, Family, Superior or Supreme Court, Director of departments or their equivalent.
- (b) Group II which shall consist of Assistant or Deputy Directors, major fiscal and administrative policy departmental staff or their equivalent.
- (c) Group III which shall consist of Division heads including the full-time Division Chief or Administrator to a statewide program. This includes Chief of Divisions supervising several line service units or their equivalent.
- (d) Group IV which shall consist of Assistant or Deputy Division Chief or Administrators, Section Chiefs or head of a major departmental function or equivalent.

7.04 ELIGIBILITY OF SUGGESTIONS

7.041 Suggestions shall be submitted on forms prescribed by the State Personnel Administrator.

7.042 Suggestions which are related to the following subjects shall not be eligible for awards:

- (a) Personal grievances
- (b) Classification and pay of positions
- (c) Matters recommended for study or review
- (d) Matters which are the result of assigned or contracted audits, studies, surveys, reviews or research.
- (e) Matters that are subject to collective bargaining agreements.
- (f) Matters requiring legislative action.

- (g) An employee shall not normally be eligible for an award for a suggestion which directly relates to the employee's assigned duties and responsibilities. If, however, such a suggestion is so superior or meritorious as to warrant special recognition, an award may be granted. In order for such a suggestion to be eligible for an award, the following questions shall be answered in the negative:

1. Is the employee expected or required to make suggestions of the type under consideration? *No*
2. Can the suggestion be implemented by the employee without consulting higher authority? *No*

7.05 MODIFICATION OF IDEAS

- 7.051 If an agency modifies an employee's suggestion and adopts the suggestion in a different form, the employee shall be eligible for an award if the employee's suggestion was directly responsible for management's taking action.

7.06 INTERAGENCY REFERRALS

- 7.061 Each suggestion shall be reviewed by the Office of Personnel Administration to determine if it has application in an agency other than the one for which it was proposed. If it is determined that a suggestion has interagency application, it shall be forwarded to each agency to which it applies.

7.07 DUPLICATE SUGGESTIONS

- 7.071 Each suggestion shall be reviewed to determine if it is a duplicate of, or similar to, a suggestion which has previously been submitted or adopted.
- 7.072 If duplicate suggestions are received by the State Personnel Administrator, the one bearing the earliest date of receipt shall be eligible for consideration and all others shall be ineligible.

7.08 GROUP SUGGESTIONS

- 7.081 The amount of an award for a suggestion made by a group of employees shall be determined on the same basis as if the suggestion has been submitted by one employee, and the amount of the award shall be pro-rated among the employees making the suggestion.

7.09 INCENTIVE SUGGESTIONS

7.091 Suggestions which involve patentable or nonpatentable inventions shall be eligible for awards.

7.092 Awards for inventions shall be determined on the same basis as awards for other types of suggestions and the suggester shall retain all rights to such patentable inventions; however, the State of Rhode Island shall have the right to use such inventions without further recourse beyond the award to the employee.

7.10 TIME LIMITATION ON AWARDS CONSIDERATION

7.101 An employee's rights to an award shall be established based on employment status at the time the suggestion is submitted and shall be protected provided:

- (a) The suggestion is adopted and implemented later by an agency within one year from the date of the employee's separation even though the employee may have separated from state government provided, however, that such separation must have been in good standing.
- (b) The State Personnel Administrator is notified that the suggestion was implemented.
- (c) In the case of a deceased employee, the award shall be paid to the employee's beneficiary or estate.

7.11 STATE AWARDS COMMITTEE

7.11 **7.0111** The State Personnel Administrator shall appoint a State Awards Committee of five (5) state employees nominated by agency heads, subject to the following:

- (a) Members shall be appointed for two-year terms, or, in the case of resignations, for the remainder of the unexpired term.
- (b) There shall be no limit to the number of terms a committee member may serve.
- (c) The State Personnel Administrator or his/her designee shall serve as an ex-officio member and chairperson of the State Awards Committee without vote except in the case of ties.
- (d) The State Budget Officer or his/her designee shall serve as an ex-officio member in addition to those members indicated above.

(e) The State Awards Committee shall:

1. By majority vote, determine the award for each suggestion that is adopted by one or more agencies; and for any other awards to be made for superior accomplishments in accordance with the Personnel Rules and the Law and authorize the payment of such awards by the adopting agency or agencies. The decision in these matters by the Committee shall be final.
2. Review requests by employees for reevaluation of their suggestions that were not adopted by an agency head. If the State Awards Committee determines that the suggestion appears to have merit and should be reevaluated, the chairman of the State Awards Committee shall request the appropriate agency head to reconsider the suggestion. The agency head's decision shall be final.

7.12 AGENCY AWARDS COMMITTEES

7.121 Each agency head shall appoint an agency awards committee of at least three (3) members, subject to the following:

- (a) Members shall be employees of the agency and shall be appointed for two-year terms.
- (b) Any vacancies on the committee due to resignation shall be filled by appointment for the unexpired term.

7.122 The Agency Awards Committee shall:

- (a) Elect a chairperson and furnish the State Personnel Administrator with the name, business address, and telephone number of the Chairperson.
- (b) Make detailed investigations and evaluations of suggestions and superior accomplishments.
- (c) Make recommendations concerning suggestions to the agency head who shall make a final decision as to whether the suggestion is to be adopted within that agency and so notify the State Awards Committee.
- (d) File complete reports with the State Awards Committee Chairperson outlining the reasons each suggestion was accepted or rejected and so notify the employee submitting the suggestion as to all final dispositions of the suggestion.

- (e) File reports with the State Awards Committee Chairperson stating the actual savings realized from the implemented suggestion each quarter during the first twelve (12) months of such implementation together with a final report upon completion of the period. Further, a copy of these reports will be forwarded to the State Budget Office in order to assist it in preparing a fiscal impact statement regarding the results of such implemented suggestions.
- (f) Encourage all employees in their agency to participate in the State Awards Program.

7.13 DIVISION AND INSTITUTIONS AWARDS COMMITTEE

- 7.131** An agency head may establish an awards committee for any division or institution within the agency with the approval of the State Personnel Administrator.
- 7.132** Such committee shall be established and operate in the same manner as the Agency Awards Committee as provided in Rule 7.12.

7.14 AWARDS

- 7.141** Awards for suggestions which upon adoption shall result in tangible benefits to the state shall be made by the State Awards Committee in the amount not to exceed five percent (5% - or a maximum of \$2,000.00) of any actual savings realized during the first twelve (12) month period which directly relate to the employee's suggestion.
- 7.1411** Such monetary awards shall be authorized by the State Awards Committee in the following manner:
 - (a) Upon the adoption of a suggestion that will result in estimated tangible savings to the state in excess to two thousand (\$2,000.00) dollars the sum of one hundred (\$100.00) dollars shall be authorized to be paid to the employee(s) whose suggestion has been adopted.
 - (b) Upon completion of the first twelve (12) months from the date of the suggestion's implementation, the balance of the award (not to exceed 5% - or a maximum of \$2,000.00) shall be authorized to be paid in one lump sum.

- (c) Upon completion of the first twelve (12) months from the date of the suggestion's implementation for those adopted suggestions which do not fall within the category of 7.1411 (a) above, the award of five percent (5% - or a maximum of \$2,000.00) shall be authorized to be paid in one lump sum.
- (d) In the event that the efficiency of state government is improved as a result of the employee's suggestion but no direct financial savings can be documented, a financial award not to exceed \$150.00 can be authorized by the state committee to be paid in full and/or the committee may authorize the awarding of a certificate of recognition and appreciation to employees so designated by the Awards Committee.

7.1412 The minimum award for any suggestion implemented shall be twenty-five dollars (\$25.00) payable upon approval of the State Awards Committee.

7.142 Monetary awards made under the provisions of this program shall be chargeable to the appropriation account of the agency or agencies that realized the tangible savings from the adoption of the suggestion.

7.143 Employees who qualify for such awards shall receive the lump sum payment only for the first year's actual savings and not for any subsequent years the idea shall be used.

7.144 In addition to any monetary awards set forth in the law and rules such employee who shall qualify for such awards under the program shall receive a suitable certificate of achievement signed by the chairperson of the State Awards Committee and the Governor of the State.

7.15 CAREER SERVICE AWARDS

Upon the completion of ten (10) years of service in the classified or unclassified class of employment the Personnel Administrator shall award a service award pin showing the number of years of service and appropriate certificate to that employee. Each five (5) years of continuous service thereafter up to fifty (50), another pin and certificate shall also be issued. The action shall be initiated by the employee's personnel officer by sending form CS-339 to the training section, Office of Personnel Administration.

The awards shall be made quarterly starting the first week in each January. However, in order to be awarded in any quarter, the applications (CS-339) must be submitted to the training section one month prior to the award date.

8.01 HUMAN RESOURCE PUBLIC DOCUMENTS: SEX NEUTRAL LANGUAGE

GL 43-3-3 enacted 1978, entitled Gender of Titles serves as the basis for reference and titling of statutory language. This rule shall extend the provisions of this statute to the Office of Personnel Administration and its subdivisions in the publishing of public documents and reports.

Wherever he/she is referred to in text, the format-(s)he will be used when any document is reprinted. Likewise, "his" will be replaced by his/her.

Every effort will be made to write personnel statutes, rules and policies in sex neutral language.

8.02 EMPLOYEE'S PERSONNEL FILE

8021 (A) No record, file or document pertaining to an employee will be made available to any unauthorized person(s) for inspection or photocopying.

8022 (B) Personnel files will be kept for each employee within State government by the Department of Administration, Office of Personnel Administration and the employing agency. No separate personnel file shall be maintained other than the one subject to employee inspection and the agency file.

8023 (C) Employees will be given a copy of all material(s) added to the personnel file at the time such is added to the file. Each employee will have the right, upon written request, to review the contents of his/her personnel file, with the exception of initial employment letters of reference investigative materials and files dealing with potential or actual litigation unless this restriction is otherwise prohibited by law.

Employees will have the right to respond in writing to all additions to the personnel file. Such additions will be made part of the file.

8024 (D) Statutes (GL 28-6.4-1,2) rules and policies and contracts may establish retention schedules or other provisions for personnel documents and other related material contained within. Records are to be removed and/or destroyed in accordance with those aforementioned policies.

9.01 FILING ORGANIZATIONAL CHARTS

All agencies are required to prepare organizational charts indicating the function(s) and authoritative structure of the agency. Said chart must be filed with the Personnel Administrator and any change must be filed with accompanying revised chart. Only recorded charts are recognized as official.

RULE X HEALTH AND SAFETY

10.01 SMOKING IN THE WORKPLACE

10.011 Summary Description

State law regulating workplace smoking.

10.012 Application

Any enclosed area occupied by a person, firm, partnership, association, corporation, company, organization or legal entity of any kind that provides primarily, but not exclusively, clerical, professional, or business services, including, but not limited to, office spaces in private office buildings, state and municipal office buildings, and federal office buildings where other than federal employees are present; medical office waiting rooms; all factory or manufacturing plant areas; libraries; museums; hospitals, nursing homes, and other medical treatment facilities.

10.013 Exceptions

Public lobbies; private enclosed workplaces occupied exclusively by smokers, unless smoking is expressly prohibited by the fire marshal or by law, ordinance, or regulation; private homes serving as workplaces; office space leased or rented by a sole independent contractor for the contractor's own use; areas legally designated for smoking.

10.014 Provisions and Requirements

All public and private-sector employers must adopt a policy that accommodates, insofar as possible, the preferences of both smokers and non-smokers, particularly those employees who, as a result of a physical condition, are "unduly sensitive to tobacco smoke." Specifically, within three months of the law's adoption (June 27, 1986), every employer must establish, implement, and maintain a written smoking policy. The policy must contain a provision to allow non-smoking employees to object to a smoke hazard or discomfort in the workplace and a clause requiring the employer to try to reach a "reasonable" accommodation between non-smokers and smokers by using already available means of ventilation or by separating or partitioning work spaces. No employer is required to make any expenditures or structural changes to accommodate the preferences of non-smoking or smoking employees. The written policy must be announced within three weeks of adoption and posted conspicuously in every workplace under the employer's jurisdiction.

10.015 Nondiscrimination Provision

Workers who exercise their right to file a complaint about their employer's violation of the law are protected from discrimination or termination without due cause.

10.016 Enforcement

The State Department of Health is responsible for enforcement. Employees may submit a written and signed letter to the department citing their employer's violation of the law. Upon receipt of a complaint, the department is authorized to issue a written notice requiring the employer to correct the violation within 10 days. If the department receives a second complaint for the same or a continued violation by the employer, it may seek a court injunction to enforce compliance, correct the violation, and assess and recover a civil penalty.

10.017 Penalties

Any employer that fails to correct a violation or that repeats or continues a violation is liable for a civil penalty of not less than \$50 nor more than \$500. Each day that a violation is committed or permitted to continue constitutes a separate offense.

10.02 DRUG TESTING

10.021 Summary Description

State law prohibiting mandatory drug testing of employees.

10.022 Application

Public- and private-sector employers.

10.023 Prohibited Action

Employers and their agents generally are prohibited from requesting or requiring any employee to submit a sample of urine, blood, or other bodily fluid or tissue for testing as a condition of continued employment.

Exceptions: Testing of a specific employee is permitted, provided certain conditions are met.

10.024 Conditions for Testing

Testing of a specific employee is permitted only if

- (1) the employer has "reasonable grounds to believe based on specific objective facts" that the worker's job performance is impaired from use of controlled substances;
- (2) the employee provides the test sample in private, "outside the presence of any person";
- (3) testing is conducted in conjunction with a bona fide rehabilitation program;
- (4) positive test results are confirmed by gas chromatography and mass spectrometry, or by some other technology that is at least as scientifically accurate;
- (5) the employee is given an opportunity to have the sample tested or evaluated, at the company's expense, by an independent testing facility; and
- (6) the employee is given a reasonable opportunity to rebut or explain the test results.

10.025 Enforcement

Employees may bring suit in civil court to enjoin violations of the law.

10.026 Remedies/Penalties

An employer that violates the Act is guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both a fine and imprisonment. In addition to providing injunctive relief, the court may order the employer to pay punitive damages in addition to any award of actual damages and reasonable attorney fees and costs.

RULE XI
WORKERS' COMPENSATION

RULE XII
EQUAL OPPORTUNITY

RULE XIII
TRAINING AND DEVELOPMENT

RULE XIV
LABOR RELATIONS

RULE XV
RECRUITMENT AND PLACEMENT

RULE XVI
WAGE AND SALARY ADMINISTRATION

RULE XVII
WORK SCHEDULING

RULE XVIII
RECORDS MANAGEMENT

RULE X1X

**RULE XX
RETIREMENT**

ADDENDUM

Additional PERSONNEL RULES that went to Public Hearing
that need to be added
to the
Official 1988 Personnel Rules

- 2.01 Classification Plan
- 3.01 Notice of Examination
- 3.092 Discrimination because of Disability
- 3.093 Undue Hardship
- 3.094 Workers' Compensation Claims
- 3.095 Bar of Claims
- 3.096 Reasonable Accommodation Rule
- 6.01 Physical Examination
- 6.051 Transfer of State Employees
- RULE XII Equal Opportunity -- Sections 12.01 through 12.86
- 12.09 Equal Opportunity (Newsome Bill info)
- 12.10 Retaliation and Coercion

LEGEND:

RED = ADA Information

BLUE = Transfer of State Employee information

BLACK = Equal Opportunity information

GREEN = Equal Opportunity (Newsome Bill information)

2.01 THE CLASSIFICATION PLAN

Policy Statement:

The Office of Personnel Administration shall conduct an ongoing review of all job descriptions to ensure that any discriminatory language is eliminated.

3.01 NOTICE OF EXAMINATIONS

Policy Statement:

A central listing of all Examination Notices shall be maintained in the Office of Personnel Administration. Said listing shall be accessible to individuals with disabilities, including individuals with a hearing or vision impairment. Notice of the listing shall be advertised in a section of the newspaper that sets forth the procedure with at least a ten (10) days notice of such advertisement and/or receipt of document notifying applicant of date of examination

3.092 **Discrimination Because of Disability**

In accordance with the Americans with Disabilities Act (ADA), the Rhode Island Constitution Article 1, Section 2, and all other federal and state disability rights laws, no state agency shall discriminate against a qualified individual with a disability in regard to employment or exclude such individual from participation in or deny said individual the benefits of the services, programs or activities of said State agency.

Additionally, the State agency shall make a reasonable accommodation to the known disability of a qualified individual, unless the accommodation would impose an "undue hardship" to the State of Rhode Island as defined in the applicable provision of the aforementioned statutes.

3.093 **Undue Hardship**

Undue Hardship -- Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by the State of Rhode Island, when considered in light of the factors set forth below. In determining whether an accommodation would impose an undue hardship on the State of Rhode Island, factors to be considered include:

- (a) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of general revenue, bond funds and/or other funding;
- (b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

- (c) The overall financial resources of the State of Rhode Island, the overall size of the government of the State of Rhode Island with respect to the number of its employees, and the number, type, and location of its facilities;
- (d) The type of operation or operations of the State of Rhode Island, including the composition, structure, and functions of the workforce, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the State of Rhode Island.
- (e) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

The determination of undue hardship is to be made by the Governor's Commission on the Handicapped in cooperation with the Agency Director, ADA Coordinators, and/or Office of Personnel Administration.

3.094 Workers' Compensation Claims

The State of Rhode Island shall not discriminate against a qualified individual by reason of such individual having filed a workers' compensation claim at any time nor deny such individual a reasonable accommodation if needed.

3.095 Bar of Claims

The State of Rhode Island shall not use a "Bar of Claims" form or make any inquiry regarding a job applicant's filing of a workers' compensation claim at anytime until a job offer has been made to the applicant.

3.096 REASONABLE ACCOMMODATION RULE

I. STATEMENT OF PURPOSE

It is the policy of the State of Rhode Island to provide reasonable accommodations for qualified persons with disabilities who are employees or applicants for employment. The State of Rhode Island will adhere to all applicable federal and state laws, regulations and guidelines with respect to providing reasonable accommodations as required to afford equal opportunity to qualified persons with disabilities. Reasonable accommodations shall be provided in a timely and cost-effective manner.

II. REQUESTING A REASONABLE ACCOMMODATION

- (a) For applicants who are seeking a reasonable accommodation during the interview and selection process, they contact the agency's appointing authority,

personnel officer, or ADA Coordinator and explain their need for an accommodation at least five (5) business days prior to the interview or other activity at which they would need the accommodation.

(b) For applicants who have been extended a "conditional offer of employment" by the state, when accepting that offer, shall complete the "Reasonable Accommodation Request" Form (CS-388A) and return it to the appointing authority, or her/his designee who will forward it to the agency's ADA Coordinator.

(c) For current employees (including those collecting workers compensation benefits), they contact their agency's ADA Coordinator and complete the "Reasonable Accommodation Request" Form (CS-388A). The ADA Coordinator may assist the employee complete this form.

III. PROCEDURES FOR ACCOMMODATING EMPLOYEES WITH DISABILITIES

State agencies must follow the procedures for determining the appropriate accommodation and implementing that accommodation contained in the State of Rhode Island Personnel Policy Manual.

6.01

PHYSICAL EXAMINATIONS

The Personnel Administrator shall establish a physical examination program which shall require persons employed in positions in the classes (s)he shall designate to be examined by a physician and present certification that they are capable of performing the duties required and that their employment in such position will not be harmful to the State, or its employees or other persons.

The Personnel Administrator may require such physical examination as designated below:

(a) **Pre-Employment Examination**

The State of Rhode Island shall not require a medical examination or make any inquiry regarding a job applicant's disability until a job offer had been made but may inquire as to the applicant's ability to perform job-related functions with or without reasonable accommodation.

(b) **Employment Entrance Examinations**

After a job offer has been made to an applicant and before the applicant's job duties begin, the State of Rhode Island may require a job applicant to submit to a medical examination and/or inquiries and may condition employment on the result of such examination and/or inquiries, so long as all entering employees in

the same job category are subject to an examination and/or inquiries regardless of disability and all confidential requirements are met.

6.051

TRANSFER OF STATE EMPLOYEES

The director of administration is authorized to transfer any employee the executive branch who is not covered by a collective bargaining unit whenever the best interests of the state would be served thereby. Any such employee may be transferred to a comparable position upon the approval of the director of the department administration and the personnel administrator.

In the case of an intra-agency transfer, the purpose of such transfer is to improve both a receiving agency's operation and the sending agency's operation in managing the state's human resources. It is anticipated that state operations will be improved by utilizing the skills and expertise of a transferred employee for specific operation(s) and or project(s).

A "comparable position" is defined as a job assignment with duties and responsibilities and/or knowledge, skills, and abilities which are reasonably similar to the general nature of work in the employee's current position and/or those contained in prior positions held by the employee. Considerations may include current employment, prior employment/work experience and education/training.

An employee transferred pursuant to RIGL 36-4-34.1 (1996) entitled "Transfer of state employees" shall be subject to the following:

- shall be under the supervision of the appointing authority of the receiving agency during the period assigned in the case of an inter-agency transfer
- shall retain his/her civil service status, rate of pay, benefits and all rights and privileges pursuant to Rhode Island General Laws
- may be transferred initially for a period of up to one (1) year's duration and may be further extended with the approval of the personnel administrator
- may retain his/her class of position or may be placed on an authorized leave from his/her class of position for the term of transfer subject to the approval of the appointing authority(s) involved and the director of administration

An appointing authority who initiates a request for an employee transfer may be obligated to provide funding for the term of the transfer.

**RULE XII
EQUAL OPPORTUNITY**

12.01 ORGANIZATION AND METHOD OF OPERATIONS

12.011 **Organization** - the RI General Law 28-5.1, regarding Equal Opportunity and Affirmative Action Policy, establishes the Rhode Island State Equal Opportunity Office and sets forth its procedures and authority

12.012 **Function** - It is the function of the Rhode Island State Equal Opportunity Office to enforce the Law which prohibits discrimination because of race, color, religion, sex, age, national origin, handicap or sexual orientation, in the field of employment in Rhode Island State Government.

12.013 **Method of Operation** - The Office accepts, from both State employees and applicants for State employment, complaints of discrimination that are based on race, color, sex, religion, age, national origin, handicap, sexual orientation or sexual harassment. The Office will investigate the allegations and shall make every effort by informal conference, conciliation and persuasion to achieve compliance. When these methods do not resolve a charge or complaint the Office will conduct a formal hearing.

12.02 DEFINITIONS - WHERE USED IN THESE RULES AND REGULATIONS

12.021 The term "Law" shall mean RI General Law 28-5.1 on Equal Opportunity and Affirmative Action.

12.022 The term "Executive Order" shall mean the Governor's Executive Order on Sexual Harassment

12.023 The terms "Charge or Complaint" shall mean a written allegation of a Civil Rights Violation, filed with the RI State Equal Opportunity Office, by an individual stating that (s)he has been discriminated against by reason of race, color, religion, sex, age, national origin, handicap, sexual orientation or sexual harassment.

12.024 The term "Civil Rights Violation" shall refer to any discriminatory acts or practices.

12.025 The term "Administrator" shall mean the Administrator of the Rhode Island State Equal Opportunity Office.

12.026 The term "Office" shall mean the Rhode Island State Equal Opportunity Office.

12.027 The term "Department" shall mean an agency in Rhode Island State Government.

12.028 The term "Complainant" shall mean an individual filing a complaint of alleged discrimination in accordance with the Law or Executive Order.

12.029 The term "Respondent" shall mean a person or agency against whom an alleged charge or complaint is filed in accordance with the Law or Executive Order.

12.0210 The term "Hearing Officer" shall mean the person authorized by the State Equal Opportunity Office to conduct formal hearings regarding alleged Civil Rights Violations, filed with the RI State Equal Opportunity Office.

12.0211 The term "Discrimination" shall mean:

(a) prejudice or prejudicial outlook, action or treatment toward individuals who are not equally considered for appointments, promotions, transfers, training and work assignments based on race, color, religion sex, age, national origin, handicap, sexual orientation or sexual harassment.

(b) a violation of any state or federal nondiscrimination statute, regulation, or executive order.

12.03 PRACTICE BEFORE THE STATE EQUAL OPPORTUNITY OFFICE

12.031 Any person may appear before the Office in his/her own behalf. Except as may otherwise be provided by law, no person may appear in a representative capacity before the Office other than (a) attorneys-at-law duly qualified and entitled to practice before the Supreme Court of the State of Rhode Island, (b) attorneys-at-law duly qualified and entitled to practice before the highest court of any other state, to appear in a representative capacity before administrative agencies of such other state, (c) such other persons as by law are expressly authorized to appear in representative capacities, and, (d) a bona fide officer of the agency (respondent) if the Office deems appropriate and is not otherwise prohibited by State Law.

12.032 All persons appearing in proceedings before the Office in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Rhode Island. If any such person does not conform to such standards, the Office may decline to permit such person to appear in a representative capacity in any proceeding before the Office.

12.04 CHARGE

12.041 Who May File

State employees and applicants for state employment may file a charge at any time within ten (10) working days of the knowledge of the alleged incident of discrimination. If the alleged violation is of a continuing nature, the date of occurrence may be any date subsequent to the commencement of the violation up to and including the date on which it shall have ceased.

12.042 Form

A charge shall be in writing and signed by the complainant using the form supplied by the RI State Equal Opportunity Office.

12.043 Contents

A charge shall be in such detail as to substantially apprise the Office of the time, place, and facts with respect to the alleged violation. It should contain the following:

- (a) The full name, address and telephone number of the person making the charge.
- (b) The name and address of the State Agency, persons against whom the charge is made.
- (c) A statement of facts alleged to constitute the violation, including the date, time, and place thereof.
- (d) A statement describing any other action instituted by/on behalf of the complainant in any other form.

12.044 Acceptance of Charge

- (e) The Office shall accept for, hearing any charge which it receives from an individual in compliance with the foregoing provisions of this article.
- (f) In the event the Office receives a written statement from an individual which does not comply substantially with Sections 4.02, 4.03 hereof, the Office may accept and docket the statement as an unperfected charge. The Office shall notify the complainant in writing of the elements which must be supplied to perfect the charge. If the individual fails or refuses to perfect the charge as specified, the charge may be dismissed.

12.045 Amendment

A charge or any part thereof, may be amended by the complainant to cure technical defects or omissions, or to clarify or amplify allegations made therein,

or to set forth additional facts or allegations related to the subject matter of the original charge, such amendments shall relate back to the original filing date.

12.046 Withdrawal of Charge

A charge or any part thereof, may be withdrawn by the complainant at any time. A complainant's request to withdraw a charge shall be in writing, signed, and witnessed. The Office shall approve the request if it is knowingly and voluntarily made, and shall promptly so notify all parties in writing.

12.05 PROCEDURE UPON CHARGE

12.051 Docketing and Service of Charge

Each charge, once filed, shall be docketed and assigned a case number by the Office. The respondent shall be notified within five (5) days following the date of filing. The complainant will be notified that the charge is being processed

12.052 Maintenance of Records

Notwithstanding any other provision of these rules and regulations, once a charge has been served on a respondent, the respondent shall preserve all records and other evidence which may be relevant to the case until the matter has been finally resolved.

12.053 Investigation

After a charge has been filed, the Office staff shall institute an investigation to ascertain the facts relating to the civil rights violation as alleged in the charge and any amendments thereto. During the investigation of a charge, the administrator or office employee supervising the investigation may request the attendance of witnesses or the production for examination and copies of any books, records or documents

12.054 Determination After Investigation

- (a) **Report** - After investigations of a charge, a report inclusive of all facts findings and recommendations will be prepared and submitted to the Administrator for determination of probable cause.
- (b) **Dismissal** - If there is no conclusive evidence of probable cause, a written notice dismissing the case will be sent to all interested parties.
- (c) **Substantial Evidence** - If probable cause of a civil rights violation is evident, the Office will serve notice of such determination advising both parties that conciliation efforts will take place.

- (d) Conciliation - The Office will proceed to conciliate the settlement of the charge and prevent the repetition of future civil rights violations. If an agreement is not reached, a formal hearing will be scheduled.

12.06 CONDUCT OF HEARING

All hearings shall be held pursuant to Chapter 35 of Title 42 of the Rhode Island General Laws.

12.07 FORMAL HEARINGS

The respondent to a complaint may file a written answer to the complaint, appear at the hearing, give testimony and be represented by counsel and may obtain from the Office, a subpoena for any person or for the production of any evidence pertinent to the proceedings. The complainant must be present at the hearing and may be represented by counsel.

12.071 The Hearing Officer from the RI State Equal Opportunity Office shall hear the case and make a decision based on the evidence presented thereto. The Hearing Officer shall not be bound by the formal rules of evidence governing courts of law, but shall permit reasonable direct and cross examination and the submission of briefs. Testimony at the hearing shall be taken under oath and recorded by tape or otherwise.

12.072 Sequence of the Hearing

- (a) Introduction of the Hearing Officer
- (b) Administration of oath to the parties and witnesses
- (c) Complainant's Presentation
- (d) Respondent's Presentation
- (e) Complainant's closing statements
- (f) Respondent's closing statements

12.073 Appearance

The complainant must be present at the hearing and may present testimony or evidence and may either in person or by counsel, examine or cross-examine witnesses. If after receiving proper notice, the complainant does not appear at the hearing the complainant may be dismissed

12.074 Continuation and Adjournment

The Hearing Officer or administrator may continue or adjourn the hearing to a later date.

12.075 Improper Conduct

The Hearing Officer may exclude from the hearing room or from further participation in the proceedings any person that engages in improper conduct. Exceptions to this are only a party or his/her attorney or a witness engaged in testifying.

12.076 Sequestering Witnesses

The Hearing Officer may sequester witnesses from the hearing until the time of their testimony.

12.077 Findings

If the Hearing Officer finds from the evidence that the respondent has engaged in a discriminatory practice, (s)he shall make written findings of fact, conclusion of law and the decision. Within five (5) days after the decision of the Hearing Officer, the Office shall inform the parties of record of the decision. As part of its order, the Office may require the respondent to pay actual damages to the complainant and to take such affirmative action as the Hearing Officer considers necessary, including a requirement for reports of the manner of compliance.

If the Hearing Officer finds from the evidence that the respondent has not engaged in a discriminatory practice, the Office shall make written findings of fact and serve the complainant and respondent with a copy of the findings of fact and with an order dismissing the complaint.

12.08 GUIDELINES ON DISCRIMINATION BECAUSE OF SEXUAL HARASSMENT

12.081 Harassment on the basis of sex is a violation of Executive Order No. 85-13. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or reflection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

12.082 In determining whether alleged conduct constitutes sexual harassment, the State Equal Opportunity Office will look at the record as a whole and at the

totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts on a case by case basis.

12.083 The appointing authority is responsible for the acts of its agents and supervisory employees with respect to sexual harassment, regardless of whether the specific acts complained of were authorized or even forbidden by the appointing authority and regardless of whether the appointing authority knew or should have known of their occurrence. The State Equal Opportunity Office will examine the circumstances or the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

12.084 With respect to persons other than those mentioned in paragraph (c) of this section, an appointing authority is responsible for acts of sexual harassment in the workplace where that appointing authority or its agents or supervisory employees knows or should have known of the conduct. An appointing authority may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action.

12.085 Prevention is the best tool for the elimination of sexual harassment. An appointing authority should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing the employees of their right to raise and how to raise the issue of harassment, and developing methods to sensitize all concerned.

12.86 An employee wishing to file a charge of sexual harassment will use the "Discrimination Grievance Procedure" established by the State Equal Opportunity Office.

12.09 I. Equal opportunity and affirmative action toward its achievement is the policy of all units of Rhode Island state government, including all public and quasi-public agencies, commissions, boards and authorities; and in the classified, unclassified and non-classified services of state employment; provided that the mandatory provisions of this section shall not apply to the legislative branch of state government.

II. This act does not guarantee employment of minorities, but it provides the appointing authority with the increased opportunity, to originally or promotionally appoint qualified minorities from an eligibility list. Original appointment is defined as the process applicable to initial entrance into state

service. Promotional appointment is defined as the process applicable to the upward nobility opportunity for existing state employees. A minority is currently defined in federal employment law as Blacks, Hispanics, American Indians, including Alaska Natives, and Asians including Pacific Islanders. H-8005 affords the opportunity for the authorization of a supplemental certification process whenever there exists a "manifest imbalance" in a particular job category. "Manifest imbalance" is defined meaning there is an underrepresentation of minorities based on a demographic analysis.

- III. The State Equal Opportunity Administrator shall serve as the Chief Executive Officer of the State Equal Opportunity Office and shall be responsible for monitoring and enforcing all equal opportunity laws, programs and policies within State government.
- IV. No later than July 1st each department or agency excluding the legislative branch of state government, shall submit to the State Equal Opportunity Office and the House Fiscal Advisor sufficient data to enable the State Equal Opportunity Office and the House Fiscal Advisor to determine whether the agency achieved the hiring goals contained in its affirmative action plan for the previous year. If the hiring goals contained in the previous year's plan were not met, the agency shall also submit with such data a detailed explanation as to why the goals were not achieved.
- V. The State Equal Opportunity Administrator will initiate a complaint against any agency excluding the legislative branch, who fails to comply with the provision set forth in Section I. Whenever the Equal Employment Opportunity Administrator initiates such a complaint, he or she shall cause to be issued and served in the name of the Equal Opportunity Office, a written notice, together with a copy of such complaint requiring that the agency, administrator, agent or employee respond thereto and appear at a hearing at a time and place specified in such notice. The Equal Opportunity Office shall follow its lawfully adopted rules and regulations concerning hearings of discrimination complaints.
- VI. A final order of the Equal Opportunity Office shall constitute an "order" within the meaning of Section 42-35-1 (j) of the general laws; shall be enforceable as such; shall be rendered in accordance with Section 42-35-12 of the general laws; and shall be subject to judicial review in accordance with Section 42-35-15 of the general laws.
- VII. The Office of Personnel Administration shall take positive steps to insure that the entire examination and testing process, including the development of job specifications and employment qualifications, is free from either conscious or inadvertent bias and shall review all recruitment or promotional procedures for all State agencies covered by this chapter for compliance with federal and

state law, and bring to the attention of the Equal Opportunity Administrator matters of concern to its jurisdiction.

- VIII. The Personnel Administrator may use open continuous competitive tests to establish lists and fill vacancies where there is a manifest imbalance of minorities in the job category.
- IX. A minority is eligible for a promotional examination if they are currently employed in state service as of the official closing date of the examination announcement or twenty-one (21) calendar days prior to the first phase of the examination, whichever is later, and is a qualified exam applicant seeking entry into a classification where there is a manifest imbalance in the job category. This section shall not be applicable to the Rhode Island State Police or the legislative branch of state government.
- X. The Office of Labor Relations shall propose in negotiations the inclusion of affirmative action language suitable to the need for attaining and maintaining a diverse workforce.
- XI. There is hereby created a five (5) member committee which shall monitor negotiations with all collective bargaining units within State government specifically for equal opportunity and affirmative action interests. The members of that committee shall include the Director of the Rhode Island Commission for Human Rights, the Equal Opportunity Administrator, the Personnel Administrator, one (1) member of the House of Representatives appointed by the Speaker, and one (1) member of the Senate appointed by the Senate Majority Leader. The initial meeting shall be called by the Equal Opportunity Administrator. The committee shall elect a chairperson who shall preside over said committee.
- XII. The Appointing Authority, along with the certification of the Equal Opportunity Administrator and the Personnel Administrator, shall determine job categories for which there exists a "manifest imbalance." These job categories are defined in the Agency Affirmative Action Plan and identified with the proper job category code in the Official State Classified and Unclassified Pay Plan.
- XIII. At least seven (7) days prior to certifying names under this Section, the Appointing Authority shall post a notice of intention to do so in the offices of the Personnel Administrator and of the Equal Opportunity Administration and shall make a copy of such notice to the applicable union, if any, with instructions to post copies of such notice at all locations where persons whose names may be certified under the provisions of this Section may, if employed, be assigned.

XIV. Supplemental Certification in the civil service is created to eliminate the overall adverse impact of systemic barriers to the employment of minorities as a protected class, and the Office of Personnel Administration shall provide all appointing authorities the necessary flexibility to remedy the effects of systemic discriminatory practices.

XV. A Supplemental Certification List of minorities may be called for in addition to the appropriate employment or promotion list, except in the following instances:

- (1) The absence of statistical data or reasonable evidence to show significant past discrimination or patterns of possible discrimination and/or adverse impact on the protected classes;**
- (2) The presence of at least one minority ranked among the three persons standing highest on the list of persons certified by the Personnel Administrator for the position in question;**
- (3) The absence of any minorities on the appropriate list; or**
- (4) Any instance in which the department or agency is subject to a contradictory or inconsistent court order.**

XVI. Supplemental Certification, based on race or color as a protected class, shall be made by an appointing authority whenever:

- (1) The appointing authority shall make requisition to fill one (1) or more positions, wherever a manifest imbalance is identified within the department's Affirmative Action Plan.**
- (2) Eligible minorities must have passed an examination for classification being recruited and/or other list deemed appropriate by the Personnel Administrator.**
- (3) In certifying names for appointment to a classification for which supplemental certification being recruited, the Personnel Administrator shall include upon the applicable list the names of six (6) persons certified pursuant to this section.**

XVII. Whenever an agency is seeking supplemental certification, they shall indicate said desire on appropriate forms seeking eligibles to the Office of Personnel Administration.

XVIII. The State Equal Opportunity Administrator shall develop and implement recruitment plans to assure that adequate consideration is given to minority applicants for all positions wherein no list exists in those job categories where a manifest imbalance exists, excluding those job categories in the legislative branch of government.

Equal Employment Opportunity**(a) Retaliation or Coercion**

Any employee or agent of state government who shall discriminate against an individual through the use of retaliation, coercion, intimidation threats or other such action because such individual has filed a complaint, testified or participated in any way in any investigation, proceeding or hearing regarding discrimination in employment or public service, or because such individual has opposed any act made under the Americans with Disabilities Act (ADA) or under Rhode Island Fair Employment Practices Act or any rules regulations issued pursuant to either, shall be subject to disciplinary action. Said action may include suspension from employment or dismissal where the discrimination is found to be willful or repeated.